

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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:
UNITED STATES OF AMERICA, : Criminal Action No.
:
versus : 1:20-cr-142
:
MELVIN PALMA FLORES, : December 13, 2021
:
Defendant. : Volume I of IV
-----x

The above-entitled Jury Trial was heard before the
Honorable Rossie D. Alston, Jr., United States District Judge.

A P P E A R A N C E S

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1 (Voir dire was held but not included herein. Include voir
2 dire on page 2, line 1.)

3 (Jury trial commenced at 10:38 a.m.)

4 THE DEPUTY CLERK: Would the defendant please stand
5 and face the jury? And ladies and gentlemen of the jury,
6 would you please stand, raise your right hand, and respond
7 after the oath.

8 (Jury panel sworn.)

9 THE DEPUTY CLERK: Please be seated.

10 THE COURT: All counsel satisfied with the
11 composition of the jury?

12 MR. BEN'ARY: Yes, Your Honor.

13 MR. JENKINS: Yes, Your Honor.

14 THE COURT: Very good.

15 Ladies and gentlemen who are remaining in the
16 gallery, I want to thank you for your willingness to come in
17 today and participate in the process. As you have observed,
18 this is a very important process because we want to make sure
19 that we can have the ability for the jury to represent a
20 compliment of our community and, obviously, this venire, which
21 is the group that you all serve in, indeed represents the
22 complement of our community. You have no responsibility for
23 the remainder of this case because you were not selected for
24 this particular jury. It doesn't mean that you might not be
25 called on to sit on other juries because we need good

1 citizens, like you, who are willing to come forward, answer
2 the questions, and do the things that you need to do to make
3 sure that the government and Mr. Flores get a fair and
4 impartial trial in this matter.

5 Obviously, a couple of things that I'm going to
6 encourage you to do and not to do. I'm going to encourage you
7 to have a happy holiday season. I'm going to encourage you
8 not to contact any of these fine people who are serving on
9 this jury while this case is pending.

10 So if you have established a relationship with
11 someone who is sitting on this jury, please do not contact
12 them, or have any connection to them, during the course of
13 this litigation. I'm going to be advising these good people
14 through the course of this trial not to talk about this case,
15 or any aspect of the case, until the case is fully presented
16 to them for their full and final deliberation.

17 Finally, on behalf of the court and the Eastern
18 District of Virginia, we appreciate you showing up here today
19 and living up to your public and civic duty and I wish you a
20 happy holiday season. Thank you. You're free to go.

21 (Jury panel members not selected excused.)

22 THE COURT: Reading for the record now: The public
23 was able to observe voir dire in courtroom 401 via the remote
24 broadcast system. The jury is now selected, and the public
25 will be able to observe the trial from the gallery. Markings

1 on seats in the gallery have been placed there to assist
2 individuals who enter the courtroom so that they can ensure
3 and maintain a safe distance from one another.

4 As you all have observed, some jurors will be seated
5 just outside the jury box to accomplish the Court's special
6 social distancing objectives, but all jurors will have an
7 unobstructed view of counsel, the witness box, and the
8 defendant throughout the trial.

9 Again, there's no significance of where you sit.
10 You're not wedded to any particular seat. Most people, like
11 they are when they go to church, once they sit on a pew that's
12 where they sit all the time. But you can sit anywhere you
13 want to as the trial goes on --

14 Your liaison or the person that's between you and
15 the Court is Ms. Tinsley. She is my courtroom security
16 officer. She's an excellent individual and an excellent
17 courtroom security officer. If you have any concerns or
18 issues, please address them to her, and, if appropriate, she
19 will contact the Court to address any circumstances or
20 situations that you may confront. But again, she's your
21 liaison.

22 I'm thinking at the end of the day she's probably
23 going to ask for your cell phone numbers, because, as I will
24 instruct you throughout the case, we cannot do anything unless
25 we have all 14 of you here. So if there are any circumstances

1 or something that comes up, please get in contact with her.

2 Just for your planning purposes, we will start
3 tomorrow at 10 a.m. And as I indicated to one of the young
4 ladies I spoke with, we will try to get as close to 4 o'clock
5 at the end of the day to excuse you. I will instruct you on
6 this formally every time: Do not discuss the case or any
7 aspect of the case with anyone while the case is pending. In
8 other words, a discussion of what's going on and what the
9 evidence is, what lawyers you think are good, none of that.
10 In other words, don't talk about the case at all. That is a
11 specific instruction that you must adhere to and it's
12 important that you adhere to that instruction.

13 What I'm going to do now, ladies and gentlemen, is
14 give you a break, a comfort break. So you can take care of
15 any of your personal needs. As a special treat for you,
16 because I'm such a great guy, we'll have a menu for you to
17 select your lunch tomorrow. You're paying for it through the
18 taxes that you pay. But in any event, we're going to have a
19 menu for you so you can select your meal. That will be done
20 at the beginning of the day.

21 We'll probably take our breaks somewhere between
22 12:30 and 1:15 every day. I like to avoid people going out at
23 12:00. Why? Because that's when everybody goes out for
24 lunch, and I'd like for you to be able to have a nice lunch
25 where you can have it in a relaxed setting and not have to

1 worry.

2 Okay. Let me go ahead and let you take your break.
3 We'll come back in. I think we probably need to do a little
4 administrative stuff, so about 11 o'clock.

5 Okay. Ms. Tinsley.

6 (Discussion off the record.)

7 THE COURT: And if you need to bring back a bottle
8 of water or anything like that, that's fine too. I'm not
9 persnickety on that. I'm drinking water.

10 (Jury excused.)

11 THE COURT: Very good. Counsel, is there anything
12 we need to do before we get into the opening statements?

13 MR. BEN'ARY: I don't believe so, Your Honor.

14 MR. JENKINS: Not on behalf of the defense, Your
15 Honor.

16 THE COURT: Very good. As you all were able to
17 observe, the process that we all engaged in to get this done
18 is effective. And so, I compliment you all on your
19 willingness to handle the case expeditiously and efficiently.
20 That is something that is a tribute to each of you as officers
21 of the court.

22 Mr. Flores, what's going to happen next now is we're
23 going to have opening statements and some of the witnesses are
24 going to testify. We've gotten the jury seated. You'll be in
25 a position to observe everyone who testifies during the course

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9

1 of the case -- by the way the courtroom was configured.

2 Are you satisfied with the configuration of the
3 courtroom, sir?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Jenkins.

6 MR. JENKINS: Yes, Your Honor.

7 THE COURT: Very good. All right. Do we need to do
8 any technical stuff to set up?

9 MR. BEN'ARY: Your Honor, once we get into
10 witnesses, as long as we can have the exhibits up so that
11 counsel can see them, that's the only thing that we need.

12 THE COURT: Okay. Very good.

13 And I think the way we have the courtroom
14 configured, all of the witnesses can actually see a screen too
15 because we have one over here for the people who are down in
16 that section there.

17 Is the government satisfied with the configuration
18 of the courtroom?

19 MR. BEN'ARY: Yes, Your Honor.

20 THE COURT: We'll see everybody back in the
21 courtroom about 11 o'clock and we'll get the case rolling.

22 (Recess.)

23 (Court proceedings resumed at 11:10 a.m.)

24 THE COURT: Let the record reflect, United States of
25 America versus Flores.

Tonia M. Harris OCR-USDC/EDVA 703-646-1438

1 Counsel, are we ready to bring the jury back in?

2 MR. JENKINS: Yes, Your Honor.

3 MS. RUMBAUGH: Your Honor, we have two brief
4 housekeeping matters. First, the government would request a
5 rule on witnesses. Such that anyone who is slated to testify
6 or -- including anyone the defense might think of calling to
7 testify, would be instructed to wait outside the courtroom
8 until they are called.

9 THE COURT: Mr. Jenkins.

10 MR. JENKINS: I have no objection to the rule, Your
11 Honor.

12 THE COURT: What I'm going to do is impose the rule.
13 I'm going to ask that counsel help me enforce the rule because
14 I don't know who witnesses are. So maybe what you want to do
15 is take a look in the courtroom now and see if there's anyone
16 that you think might be a witness.

17 MS. RUMBAUGH: None of the government's witnesses
18 are present.

19 MR. JENKINS: And the same is true for the defense,
20 Your Honor. I don't believe that there's any witnesses that
21 we intend to call who are present in the courtroom at this
22 time.

23 MS. RUMBAUGH: Yes, Your Honor. I should caveat.
24 Our case agent is present.

25 THE COURT: And pursuant to the rule, you're

1 identifying that individual as your case agent?

2 MS. RUMBAUGH: Yes, Your Honor. This is Fairfax
3 County Police Detective Melissa Wallace.

4 THE COURT: Okay. Any objection, Mr. Jenkins?

5 MR. JENKINS: No objection, Your Honor.

6 THE COURT: Again, I'm going to depend on you all to
7 help me enforce the rule because I can't monitor who comes in
8 and out of the courtroom. If you see someone come in, just
9 stop the proceeding and say we had a witness that didn't know
10 about the rule who slipped in and asked them to leave so we
11 won't have a problem.

12 MS. RUMBAUGH: Yes, Your Honor. The one other thing
13 is something very minor, but I noticed that many of the jurors
14 were out in the entranceway when we took a break. And this
15 came up in another trial I had earlier this year where Judge
16 O'Grady just simply instructed the jury to take no offense if
17 the attorneys averted their eyes, made a point not to interact
18 with them. We ask the Court to do the same here.

19 THE COURT: I'll try to clean up as best I can. And
20 I appreciate you saying that because that is a real difficult
21 thing when you're counsel -- and this is a small town -- even
22 though Alexandria is where we sit, and you run into people,
23 and I've seen situations where, as a lawyer, I would cross the
24 street just so I wouldn't get myself in a situation. So I
25 will do what I can to make sure that the jurors understand

1 that.

2 MS. RUMBAUGH: Thank you, Your Honor.

3 THE COURT: I'm going to give them some preliminary
4 instructions about the case when they come back in and then
5 we'll look forward to opening statement. You're free to move
6 about the well, to the extent that you can. I'd say that the
7 closest that I would like you to get to the jury is maybe no
8 closer than the end of your desk. So if you want to move
9 about the courtroom, that's fine.

10 Ms. Tinsley.

11 (Jury present.)

12 THE COURT: Thank you. You may be seated.

13 Ladies and gentlemen of the jury, now that you have
14 been sworn, I'm going to give you some preliminary
15 instructions to guide you in your participation in the trial.

16 First of all, I would like to kind of make a point
17 of saying something that is important to note in every
18 situation. We have some fine professionals who are presenting
19 this matter, Mr. Ben'Ary, Ms. Rumbaugh, and Mr. Jenkins, and
20 we lawyers are very, very adherent to rules and we get afraid
21 of when we get in situations that make us uncomfortable, and
22 one of the things that makes us uncomfortable sometimes is
23 when we run into a juror in the hallway or out walking around
24 going back and forth to lunch. And most lawyers are a little
25 bit OCD, and what a lot of them do, particularly the ones that

1 are particularly OCD like I was, they'll cross the street or
2 avert their eyes and make sure that they have no contact with
3 the jury because they don't want anyone to think that they're
4 trying to influence the jury in any way.

5 And so, if you see any of the lawyers in the case,
6 and they go the other way when they see you, or don't
7 acknowledge you with a good afternoon or good morning, please
8 don't hold it against them. These are all fine people, good
9 people who always are willing to accord individuals with
10 pleasantries. So please don't connote any bad situations or
11 the like because they do not respond or say good afternoon or
12 good morning. I'm telling them that you say good morning,
13 they can say it back. So, again, if they feel uncomfortable,
14 it's because they're trying to do their jobs. And as I said
15 they are all good people. I just want to make sure that the
16 thing is handled the way it is.

17 It will be your duty to find from the evidence what
18 the facts are. You and you alone will be the judges of the
19 facts. You will then have to apply the law to those facts as
20 the Court will give it to you. You must follow that law
21 whether you agree with it or not. Nothing the Court may say
22 or do during the course of the trial is intended to indicate,
23 or should be taken by you as indicating, what your verdict
24 should be.

25 The evidence from which you will find the facts will

1 consist of the testimony of witnesses, documents, and other
2 things received into the record as exhibits, and any facts
3 that the lawyers agree to, or stipulate to, or that the Court
4 may instruct you to find. Certain things are not evidence and
5 must not be considered by you. I will list them for you now:
6 Statements, arguments, and questions by lawyers are not
7 evidence. Objections to questions are not evidence. Lawyers
8 have an obligation to their clients to make objections when
9 they believe the evidence being offered is improper under the
10 rules of evidence. You should not be influenced by the
11 objection or by the Court's ruling on it. If the objection is
12 sustained, ignore the question. If it is overruled, treat the
13 answer like any other. If you are instructed that some item
14 of evidence is received for a limited purpose only, you must
15 follow that instruction. Testimony that the Court has
16 excluded or told you to disregard is not evidence and must not
17 be considered.

18 In other words, you should not consult dictionaries
19 or reference materials, search the internet, websites, or
20 blogs, or any other electronic tools to obtain information
21 about this case or to help you decide the case. Please do not
22 try to find out information from any source outside the
23 confines of this courtroom.

24 Until you retire to deliberate, you may not discuss
25 this case with anyone, even your fellow jurors. After you

1 retire to deliberate, you may begin discussing the case with
2 your fellow jurors, but you cannot discuss the case with
3 anyone else until you have returned a verdict and the case is
4 at an end.

5 I know that many of you use cellphones, BlackBerrys,
6 Internet, and other tools of technology. You must also not
7 talk to anyone at any time about this case or use these tools
8 to communicate electronically with anyone about the case.
9 This includes your family and friends. You may not
10 communicate with anyone about this case from your cell phones,
11 through e-mails, BlackBerrys, text messaging, or on Twitter,
12 or any blog website, including Facebook, Google, Myspace,
13 LinkedIn, or YouTube. I tried to list all of them that I
14 could think of.

15 But the bottom line is you may not use any similar
16 technology or social media even if you have not -- even if I
17 have not specifically mentioned it here. I expect you will
18 inform me as soon as you become aware if any other jurors are
19 in violation of these instructions. A juror who violates
20 these instructions jeopardizes the fairness of these
21 proceedings, and a mistrial could result, which would require
22 the entire trial to start all over.

23 Finally, do not form an opinion until all the
24 evidence is in. Keep an open mind until you start your
25 deliberations in this case. I hope that you will find the

1 case interesting and noteworthy. Again, anything you may have
2 seen or heard outside this courtroom is not evidence and must
3 be disregarded. You're to decide the case solely on the
4 evidence presented to you in this courtroom.

5 There are two kinds of evidence: Direct and
6 circumstantial. Direct evidence is direct proof of a fact,
7 such as testimony of an eyewitness. Circumstantial evidence
8 is proof of facts from which you may infer or conclude the
9 other fact exists. I will give you further instructions on
10 these as well as other matters at the end of the trial, but
11 keep in mind that you may consider both kinds of evidence.

12 It will be up to you to decide which witnesses to
13 believe, which witnesses not to believe, and how much of any
14 witness's testimony to accept or reject. I will give you some
15 guidelines for determining the credibility of witnesses at the
16 end of the case.

17 As you know, this is a criminal trial. There are
18 three basic rules about a criminal trial that you must keep in
19 mind. First, the defendant is presumed innocent until proven
20 guilty. The indictment brought by the government against the
21 defendant is only an accusation. Nothing more. It is not
22 proof of guilt or anything else. The defendant, therefore,
23 starts out with a clean slate.

24 Second, the burden of proof is on the government
25 until the very end of the case. The defendant has no burden

1 to prove his innocence or to present any evidence or even to
2 testify.

3 Since the defendant has a right to remain silent,
4 the law prohibits you from arriving at your verdict by
5 concerting that the defendant may not have testified.

6 Third, the government must prove the defendant's
7 guilt beyond a reasonable doubt. I will give you further
8 instructions on this point of law, but bear in mind that this
9 is in respect to a criminal case, which is different from a
10 civil case.

11 Now, a few words about your conduct as jurors. You,
12 as jurors, must decide this case based solely on the evidence
13 presented here within the four walls of this courtroom. This
14 means that during the trial you must not conduct any
15 independent research about the case, matters in the case, and
16 the individuals involved in the case.

17 The trial will now begin. First, the government
18 will make an opening statement, which is simply an outline to
19 help you understand the evidence as it comes in. Next, the
20 defendant's attorney may, but does not have to, make an
21 opening statement. Opening statements are neither evidence
22 nor arguments. The government will present its witnesses and
23 the counsel for the defendant may cross-examine them.
24 Following the government's case, the defendant may, if he
25 chooses, to present witnesses from the government, and may

1 then cross-examine.

2 After all the evidence is in, the attorneys will
3 present their closing arguments and summarize and interpret
4 the evidence for you. And the Court will instruct you on the
5 law. After that, you will retire to deliberate and reach your
6 verdict.

7 Ladies and gentlemen, I'm going to also allow you to
8 take notes during the course of the trial. But remember your
9 notes are not evidence. It's basically an opportunity for you
10 to put down things that you think are important to consider
11 during your deliberations.

12 And once again on behalf of the Court, the Eastern
13 District of Virginia, and the judges of the Eastern District
14 of Virginia, and the parties involved, I thank you for your
15 participation in this trial.

16 Opening statement.

17 MS. RUMBAUGH: Thank you, Your Honor.

18 **OPENING STATEMENT**

19 MS. RUMBAUGH: Ladies and gentlemen of the jury, one
20 night, in late October of 2019, Melvin Palma Flores, the
21 defendant that you see before you here today, took a gun to
22 the Meadow Woods apartment complex in Hybla Valley in
23 Alexandria, just a few miles south from here.

24 He took a gun, he took someone else's car to get
25 there, and he used someone else's social media account to

1 communicate with his intended victim, Xyqwavius Brown, who
2 sometimes went by Qwa. What prompted that late night covert
3 trip to the Meadow Woods apartments? Well, Mr. Palma Flores
4 is a weed dealer. He sells marijuana. He took pictures and
5 videos on his phone of the marijuana that he sold. He also
6 took pictures and video of the large sums of cash that he made
7 selling weed. He carried guns for protection because drug
8 dealing is a dangerous business and because he had been robbed
9 before.

10 And earlier in the day, before that late-night trip
11 to the Meadow Woods apartment complex, where Qwa Brown lived
12 with his grandmother, Melvin Palma Flores had been robbed.
13 Someone had robbed Mr. Palma Flores of a small amount of
14 marijuana, snatched it right out of his hand, and the person
15 who set up Mr. Palma Flores to be robbed was Qwa Brown. And
16 for that, ladies and gentlemen, Mr. Palma Flores killed him.

17 Now, there are three counts of the indictment. The
18 first count is possession with intent to distribute marijuana,
19 and that count pertains to the marijuana that Mr. Palma Flores
20 had that was stolen from him. He intended to sell that to one
21 of Mr. Brown's associates before it was stolen from him.
22 You're going to hear from Elijah Kyle-Canady, who is expected
23 to testify about what happened that afternoon, that he
24 witnessed the robbery, and that it was Qwa Brown who set it
25 up.

1 Now, Count 2 of the indictment charges the defendant
2 with murder by firearm in furtherance of drug trafficking.
3 You're going to hear a lot of evidence about this particular
4 count. You're going to hear about the crime scene that night.
5 You're going to see photos of the scene where Mr. Brown was
6 found on the exterior steps of his apartment building. You're
7 going to see bullets and cartridge casings that were found on
8 the scene. You're going to hear from Fairfax County Police
9 Detective Mike Roberts, who was in charge of the crime scene
10 that night.

11 Detective Roberts also was able to calculate the
12 trajectory of the bullets based on bullet holes found at the
13 scene, and he will explain all of that to you. You're going
14 to hear from the medical examiner who conducted the autopsy of
15 Mr. Brown, who found that he died because of a bullet wound
16 directly to the top of his head. She actually recovered that
17 bullet during the autopsy.

18 You're also going to hear from Forensic Analyst Cara
19 McCarthy, from the Virginia Forensic Science's Firearms and
20 Toolmarks Section. Ms. McCarthy analyzed the bullets and the
21 cartridge cases found at the scene, and she concluded that
22 they were all fired from the same gun and that gun is
23 consistent with a GLOCK 9-millimeter pistol.

24 And you'll hear from the two people who went with
25 Mr. Palma Flores to the Meadow Woods apartment complex that

1 night. Laila Sheehy, who is Mr. Palma Flores's on-again and
2 off-again girlfriend, and Kollin Worlds. It was Ms. Sheehy's
3 car that the three of them took to the Meadow Woods apartment,
4 rather than Mr. Palma Flores' mother's car, which he had been
5 driving earlier that day. And it was Kollin Worlds' Snapchat
6 account that Mr. Palma Flores was using to communicate with
7 Qwa Brown to lure him out of his apartment.

8 In fact, the last communication between Qwa Brown
9 and Mr. Worlds' Snapchat account came just five minutes before
10 the first 911 call came in regarding the shooting.

11 Now, Ms. Sheehy and Mr. Worlds are both expected to
12 testify that they didn't know why they were going there that
13 night, but when they arrived at the apartment complex, they
14 parked a ways away from the building where Mr. Brown lived.
15 The defendant got out of his car, walked down a hill, and out
16 of their line of sight. Moments later they heard multiple
17 gunshots. Mr. Palma Flores came running back to the car
18 carrying a gun.

19 Ms. Sheehy is also expected to testify that in the
20 aftermath of the shooting, Mr. Palma Flores dismantled his
21 gun, his small black handgun, and disposed of the different
22 parts of the gun in two different bodies of water, including
23 the Potomac River. The gun, to this day, has never been
24 recovered.

25 Now, you'll also hear from Detective Melissa

1 Wallace, also with Fairfax County Police Department.
2 Detective Wallace is the lead detective assigned to this case,
3 and she's going to explain to you, step-by-step, her
4 investigation. And how the evidence that she obtained all
5 points to Mr. Palma Flores. And that evidence includes
6 evidence from his Instagram account and his cell phone showing
7 that he, in fact, owned a small black handgun consistent with
8 the GLOCK 9-millimeter.

9 Now, the final count in the indictment is witness
10 tampering. And there's mentioning that in the aftermath of
11 the shooting, Mr. Palma Flores took several steps to conceal
12 what he had done.

13 First, as I mentioned, he dismantled his gun and
14 threw it away. Second, he took the clothes that he had been
15 wearing that night, he drove them over to his cousin Hector's
16 apartment in Arlington, and he burned them in the middle of
17 the night.

18 And third, as it pertains to the third count of the
19 indictment, he wrote a letter, two letters actually, to
20 Ms. Sheehy. And in one of those letters he instructed her to
21 lie, to blame what had happened on Kollin Worlds. He
22 explained the plan. He told her to get everyone, his sister,
23 Jasmine; his cousin, Hector; his friend, Jason; and
24 Ms. Sheehy, herself, on the same page so that their false
25 stories would align. And for that Mr. Palma Flores is charged

1 with witness tampering.

2 Now, AUSA Ben'Ary and I represent the government,
3 and it is our burden to prove every element of the three
4 counts in the indictment beyond a reasonable doubt. And I
5 submit to you that at the end of the evidence, at the end of
6 our case, once you've had a chance to hear and see all the
7 evidence and apply your common sense, it will be clear to you
8 beyond a reasonable doubt that Melvin Palma Flores, this
9 defendant, murdered Xyqwavius Brown in a premeditated fashion
10 over an ounce of marijuana and instructed Laila Sheehy to lie
11 for him to cover it up.

12 And at the end of the case, we will stand before you
13 again and we will ask you to hold Mr. Palma Flores accountable
14 and find him guilty of all three counts in the indictment.
15 Thank you.

16 THE COURT: Thank you, Counsel.

17 Mr. Jenkins.

18 OPENING STATEMENT

19 MR. JENKINS: Thank you, Your Honor. May it please
20 the Court --

21 THE COURT: Yes, sir.

22 MR. JENKINS: -- government counsel, Mr. Flores.

23 Ladies and gentlemen of the jury, again, my name is
24 Robert Jenkins and today I have the pleasure of representing
25 Mr. Melvin Palma Flores. She-said-he-said isn't enough. This

1 case is not about marijuana. It's not about selling
2 marijuana. This case is about the unfortunate taking of
3 Mr. Brown's life. Mr. Brown, like Mr. Flores, engaged in the
4 possession and sale of marijuana. At the end of this case, I
5 have no doubt that you will conclude that Mr. Flores was
6 involved in the sale of marijuana. You're also going to hear
7 a lot about the drug trade, tools of the drug trade, firearms,
8 scales, baggies, you're even going to get to see what the
9 marijuana looks like that both Mr. Brown as well as Mr. Flores
10 dealt in.

11 You're going to hear a lot of evidence also about
12 the very inherent dangerous nature of drug trafficking. That
13 drug traffickers often use and possess firearms, that drug
14 traffickers themselves are often targets for robberies, and
15 you all also hear that there are some involved in the drug
16 trade who specifically target other drug dealers for robbery.

17 Unfortunately, Mr. Brown was one of those
18 individuals. And you will hear evidence that those who are
19 engaged in such activity themselves are often subject to
20 retaliation and violence themselves. And it's a very, very,
21 very dangerous world. A world in which you encounter other
22 dangerous individuals, and you make a lot of enemies. The
23 government has explained to you what their theory is in terms
24 of how Mr. Flores was involved in Mr. Brown's death. But what
25 you did not hear, and you will not hear in this entire trial,

1 no witness will take that stand and testify to having seen
2 Mr. Flores shoot and kill Mr. Brown.

3 You will hear that the murder was accomplished at an
4 apartment complex. There are going to be no videos presented
5 to you on the night in which Mr. Brown was shot and killed.
6 You will not -- no one will take the stand and testify as to
7 having recovered the firearm that was used in order to kill
8 Mr. Brown. You certainly will hear no evidence, no physical
9 evidence, that ties Mr. Flores to this unfortunate taking of
10 Mr. Brown's life.

11 At the end, ladies and gentlemen, you'll be left
12 with "she said," and what "he said." And ladies and
13 gentlemen, in a criminal trial, as the judge has already
14 explained to you, the government has a burden to prove beyond
15 a reasonable doubt that Mr. Flores committed the acts he is
16 charged with. And I submit to you, again, ladies and
17 gentlemen, "she said" and "he said" is not enough.

18 And for that reason, ladies and gentlemen, after you
19 have heard all of the testimony in this case, had the
20 opportunity to review all the evidence, I have no doubt you
21 will reach the only true verdict that applies to these charges
22 with respect to my client, Mr. Flores, and that is, simply,
23 not guilty. Thank you.

24 THE COURT: Thank you, Mr. Jenkins.

25 First witness for the government.

1 MR. BEN'ARY: Thank you, Your Honor. United States
2 calls Fairfax Police Lieutenant David Duffett.

3 (Government's witness, Lieutenant David Duffett, was sworn.)

4 THE COURT: Sir, if you're fully vaccinated and
5 you're comfortable doing so, you may remove your mask while
6 testifying.

7 THE WITNESS: Thank you, Your Honor.

8 MR. BEN'ARY: May I proceed, Your Honor?

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. BEN'ARY:

12 Q. Good morning.

13 A. Good morning.

14 Q. Would you tell the members of the jury your full name,
15 please, and let me have you spell your first and last name for
16 the benefit of our court reporter.

17 A. Sure. I'm Second Lieutenant David, D-a-v-I-d, Duffett,
18 D-u-f-f-e-t-t.

19 Q. And how are you employed, sir?

20 A. I work for the Fairfax County Police Department.

21 Q. How long have you been a law enforcement officer with the
22 Fairfax County Police Department?

23 A. 20 years.

24 Q. And are you working today, sir?

25 A. Yes, I am.

1 Q. Is there a particular area of the county that you're
2 assigned to?

3 A. I'm assigned to the Mount Vernon District Station.

4 Q. And how long have you had that assignment?

5 A. I've been assigned the majority of my career,
6 approximately 15 years.

7 Q. And are you familiar with the area of Fairfax County that
8 the Mount Vernon District Station covers?

9 A. Yes, I am. I also grew up there. I was born there.

10 Q. I want to draw your attention to early morning hours of
11 October 26, 2019.

12 A. Yes.

13 Q. Were you working at the Mount Vernon District Station as
14 a police officer on that early morning hours of that date?

15 A. Yes, I was.

16 Q. And did you have occasion to respond to a call at 7112
17 Fairchild Drive?

18 A. Yes, I did.

19 Q. And about what time was it?

20 A. That would have been in those evening hours. I
21 apologize. I can't remember if it was before or after
22 midnight.

23 Q. Is it fair to say it was around midnight?

24 A. It was in that area, yes.

25 Q. I want to have you take a look, please, at what has been

1 marked for identification as Government 13. It's an overhead
2 map. I'd ask you if you recognize that area, 13.

3 A. 13?

4 Q. Yes, please.

5 A. Yes, I found No. 13.

6 Q. And is that a map that encompasses the area of 7112
7 Fairchild Drive?

8 A. Yes, it does. It shows the apartment community there.

9 Q. And do you recognize that to be an accurate
10 representation of that area of the county?

11 A. Yes, it is.

12 MR. BEN'ARY: I'd offer 13 into evidence.

13 THE COURT: Without objection.

14 MR. JENKINS: No objection.

15 THE COURT: Without objection.

16 (Government's Exhibit No. 13 was admitted into evidence.)

17 MR. BEN'ARY: May we publish it for the jury, Your
18 Honor?

19 THE COURT: You may.

20 BY MR. BEN'ARY:

21 Q. Just to start out. There's a dot on one of the buildings
22 depicted, sort of, in the middle-right of the map. What is
23 that?

24 A. That's the location where 7112 Fairchild Drive is.

25 Q. Sir, can you explain to the members of the jury what

1 information you had responding there and what you did to try
2 and locate the incident?

3 A. I was dispatched to a report of a person shot outside one
4 of the apartment buildings there. I believe it was 7106 was
5 the original dispatch location. I responded to that area
6 going up Holly Hill Road as you can see on Exhibit 13. I
7 stopped at the approximate area on Holly Hill Road instead of
8 -- in front of the 7106 building, started looking for -- a
9 report of a person having been shot in front of that building.

10 Q. And did you locate anyone in that area in front of 7106?

11 A. 7106, I did not. I searched the building as well as the
12 attached buildings in that block, as well as the staircase. I
13 was there with other officers. I was not there by myself, and
14 we did not locate anything suspicious.

15 Q. And so, what did you do to try and figure out what this
16 call was all about?

17 A. I received an update stating that the actual location was
18 behind the building I was at. And so, I went around the
19 building -- using this map I went around the building towards
20 the mid-place side of the building. As soon as I came around
21 the corner of the dispatch -- originally dispatched location,
22 I was able to see a person at the 7112 building in front of
23 the building laying down.

24 Q. And where exactly do you recall this person laying down?

25 A. It would have been at the very bottom of the staircase at

1 7112, at the very bottom.

2 Q. Still on the staircase or off of the staircase?

3 A. I apologize. I don't recall exactly whether they were
4 still partially on the stairs or not. They were definitely at
5 the bottom of the staircase.

6 Q. I'm going to ask you to take a look at another photo in
7 that binder, please. It's 1B. It's behind the one tab. It
8 should be the second.

9 A. Yes, I'm looking at 1B.

10 Q. And do you recognize what that is a photo of?

11 A. Yes. So this shows the front of the apartment building.
12 It's marked 7112.

13 Q. And is it a fair and accurate representation of what that
14 building looked like as you responded to it on that early
15 morning?

16 A. Yes, it does.

17 MR. BEN'ARY: Can I offer 1B into evidence?

18 THE COURT: Any objection?

19 MR. JENKINS: No objection, Your Honor.

20 THE COURT: Without objection.

21 MR. BEN'ARY: I'd like to ask that it be published,
22 please.

23 THE COURT: You may.

24 (Government's Exhibit No. 1B was admitted into evidence.)

25 BY MR. BEN'ARY:

1 Q. Is this the area where you responded to where you found
2 the individual lying, sort of, somewhere near the bottom
3 portion of the stairs?

4 A. Yes. It would have been in, kind of -- in that area
5 right at the bottom of the staircase. As you can see there,
6 right where it says 7112.

7 Q. And once you and your colleagues located this individual
8 at the bottom of the stairs, what happened next?

9 A. Right at that point it was a matter of determining what
10 we had, what kind of injuries we had on this person. If there
11 were injuries, there were -- injuries were very apparent.
12 Trauma had happened to this person and at that point I wanted
13 to seek medical attention for this person. And I had units
14 respond with the proper medical equipment to render care.

15 Q. And understanding you're not a medical professional, can
16 you give a description of the injuries that were apparent to
17 you as a law enforcement officer?

18 A. Well, it was apparent to me there was a wound to the
19 person's head, as well as to an arm area.

20 Q. And so, was emergency medical assistance requested?

21 A. It was immediately requested on that scene.

22 Q. All right. And did you and your colleagues take steps
23 either then or shortly thereafter to secure the crime scene?

24 A. Yes. As my officers started giving care, it was at that
25 point trying to determine what kind of crime we had here as

1 well as starting to start putting up crime scene tape to
2 secure that area to make sure that whatever evidence is
3 preserved there.

4 Q. And just can you run the jury through briefly what are
5 some of the steps that were taken here in order to preserve
6 evidence, placement of evidence, the integrity of the crime
7 scene?

8 A. The primary thing was we stopped any movement at that
9 location, no persons coming and going. There was evidence on
10 the stairs that you can see in this 1B exhibit. We wanted to
11 make sure that those -- that evidence was not tampered with in
12 any way, not moved in any way. I asked my officers not to go
13 up that staircase. In addition to having -- officers were
14 ordered to start putting up that crime tape to -- again, to
15 further limit people being allowed access into that area.

16 Q. And at this time, and probably presently as well, are
17 there detectives who are trained in crime scene preservation,
18 analysis that would come in and help after the scene is
19 secured?

20 A. Absolutely. I contacted what's called our "duty officer"
21 who is the primary person in charge of operations for the
22 department who then calls out our detectives from our major
23 crimes bureau to come out, as well as our crime scene
24 technicians to come out, and to start doing their processing.

25 Q. And did members of that crime scene unit analyze this

1 scene and collect evidence?

2 A. Absolutely.

3 Q. What happened with the individual who you testified you
4 observed with those injuries?

5 A. Again, my officers started giving immediate care to that
6 person until our rescue squad showed up and were able to take
7 him to the hospital.

8 Q. And I take it that when you arrived and people were
9 working on saving the life of this individual, his care was
10 paramount over taking pictures and documenting evidence at the
11 scene?

12 A. Absolutely. That was the primary concern at that time
13 because we didn't even know exactly what we were dealing with
14 at that point.

15 MR. BEN'ARY: Those are my questions, lieutenant.

16 Mr. Jenkins will have some questions for you. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Cross.

19 MR. JENKINS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. JENKINS:

22 Q. Lieutenant Duffett, can you describe for the jury some of
23 your current duties and responsibilities?

24 A. I'm still a squad supervisor at the Mount Vernon District
25 Station.

1 Q. Exactly what does that mean?

2 A. I have people -- officers that work underneath me. Their
3 primary responsibility is responding to calls for service.

4 Q. Are you involved in the investigations of crimes?

5 A. For my officers, yes.

6 Q. Are you involved with making arrests?

7 A. Yes.

8 Q. If I could have Government's Exhibit 13 displayed for the
9 jury, again.

10 Now, lieutenant, I believe you testified that you're
11 familiar with this area that's depicted in Government's
12 Exhibit 13.

13 A. Yes.

14 Q. Where is it located?

15 A. This was located in what's called in our area 201, our
16 service area. It's right off of Lockheed Boulevard and
17 Richmond Highway.

18 Q. Would I be correct in assuming that on the evening of
19 October 26, 2019, when you arrived at this location, this
20 wasn't your first occasion to being at this apartment complex,
21 correct?

22 A. I've been to this apartment complex many times.

23 Q. And that's because this apartment complex is an area in
24 which officers from the Mount Vernon Station often have to
25 respond to, correct?

1 A. It's one of many areas that we respond to, sir.

2 Q. Because there's a fair amount of crime that goes on in
3 this -- or reported crimes that go on in this area, correct?

4 A. It's heavily populated so there's going to be more calls
5 for service simply based on the population.

6 Q. What type of crimes?

7 A. Anything. A common call in this area is just
8 trespassing.

9 Q. What about vandalism?

10 A. Vandalism as well.

11 Q. Drug dealing?

12 A. Occasionally.

13 Q. Firearms?

14 A. Occasionally.

15 Q. Assaults?

16 A. Yes.

17 MR. JENKINS: I have no further questions, Your
18 Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. BEN'ARY:

22 Q. Lieutenant, how many reports of somebody being shot in
23 the head did the police receive on the early morning of
24 October 26, 2019?

25 A. Only one.

1 MR. BEN'ARY: Thank you.

2 THE COURT: Is this witness subject to recall?

3 MR. BEN'ARY: Not by the government, Your Honor.

4 THE COURT: Mr. Jenkins?

5 MR. JENKINS: No, Your Honor.

6 THE COURT: All right. Lieutenant, you're free to
7 leave. Please do not discuss the case or any aspect of the
8 case with anyone while the case is pending.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Yes, sir.

11 (Witness excused.)

12 MR. BEN'ARY: Your Honor, the next witness would be
13 Fairfax Police Officer, Kyle Wilson.

14 THE COURT: Kyle Wilson.

15 (Government's witness, Kyle Wilson, was sworn.)

16 THE COURT: Sir, if you're fully vaccinated and
17 you're comfortable doing so, you may remove your mask while
18 testifying.

19 THE WITNESS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. BEN'ARY:

22 Q. Good afternoon, sir.

23 A. Good morning, sir.

24 Q. Would you tell the members of the jury your full name,
25 please, and I'm going to have you spell your first and last

1 name.

2 A. Kyle Wilson. First name, K-y-l-e, last name,
3 W-I-l-s-o-n.

4 Q. And how are you employed, sir?

5 A. I'm a police officer with the Fairfax County Police
6 Department.

7 Q. How long have you been employed as a police officer with
8 the Fairfax County Police Department?

9 A. Approximately over five years.

10 Q. And what is your current assignment with the police
11 department?

12 A. Patrol officer at Mount Vernon Station.

13 Q. How long have you been assigned to Mount Vernon Station?

14 A. Full time with the department.

15 Q. And were you working on or about the early morning hours
16 of October 26, 2019, in that capacity?

17 A. Yes, sir.

18 Q. Part of beginning as an officer with the Fairfax County
19 Police Department, do you have military service in your
20 background?

21 A. I do, sir.

22 Q. Can you describe for the members of the jury your
23 military service?

24 A. Yes, sir. I was honorably -- worked with the United
25 States Marine Corps active duty as an infantry.

1 Q. And as a member of our military, did you receive training
2 as a combat medic?

3 A. Yes, sir.

4 Q. And were you deployed?

5 A. I did two deployments overseas, yes, sir.

6 Q. Thank you, sir.

7 I'm going to draw your attention, again, back to the
8 early morning hours of October 26, 2019. Were you on duty in
9 that timeframe?

10 A. Yes, sir.

11 Q. And did you have occasion to respond to a call related to
12 7112 Fairchild Drive?

13 A. Yes, sir.

14 Q. And is that within Fairfax County in your area that you
15 were covering that day?

16 A. Yes, it is.

17 Q. Can you tell the members of the jury what was the call
18 about when you pulled up, what did you understand it to be,
19 and what did you do?

20 A. Approximately at 12:32 a.m. in the morning we responded
21 to a call for weapons and a shooting. Once we arrived on
22 scene, the given location was giving us a hard time to find
23 the location of the victim. During the search we were able to
24 locate him at a different address.

25 Q. And was someone in medical distress located at 7112

1 Fairchild Drive?

2 A. Yes, sir.

3 MR. BEN'ARY: And can I ask 1A to be published,
4 again, please. I'm sorry, 1B.

5 BY MR. BEN'ARY:

6 Q. Do you recognize what this is a photo of, Officer?

7 A. I do.

8 Q. Is this a photo of the address where you found the victim
9 on the early morning hours of October 26, 2019?

10 A. It is.

11 Q. Now, there's not any people pictured here.
12 Could you describe for the jury where you found this
13 individual in medical distress?

14 A. Yes, sir. So once I arrived on scene, I observed the
15 victim to be lying on the bottom of the stairwell. He was
16 lying on his back, so he was able to look at me at the bottom
17 of the stairwell. The way he was laying down his -- you can
18 imagine his bottom of his knees and his legs are underneath
19 his buttocks. So it would be the stairwell, his feet, and
20 then his buttock.

21 Q. Sir, in that position is it -- would the tops of his feet
22 been back under against the stairs?

23 A. Correct.

24 Q. And what did you do when you observed that?

25 A. I immediately told the officer to take him off that --

1 off the incline to put him on flat ground and started to give
2 him medical aid.

3 Q. Why did you move him from off the stairs onto level
4 ground?

5 A. It's just standard procedure. While I work on a patient
6 to get him on flat level ground and start taking off his
7 clothes and start working through the process.

8 Q. And once that individual was moved off of his position on
9 the stairs onto level ground, can you describe for the members
10 of the jury what you and other colleagues did to try to save
11 his life?

12 A. Yes. I immediately observed -- well, based on my
13 training and experience, to be a possible gunshot wound to
14 his -- back of his head area. That's, obviously, the most
15 immediate thing I needed to take care of. I started to have
16 officers apply pressure with gauze to that area to stop the
17 bleeding.

18 During further analysis, we started taking off
19 clothing. During that I observed a possible -- another
20 gunshot wound to his right shoulder area where we started
21 utilizing quick cloth to stop the bleeding there as well.

22 Q. When you say -- I think you said you took off his
23 clothing, how did you do that?

24 A. I can't remember exactly which officers, but trying to
25 take off his pants, his shirts, just immediately trying to see

1 any other wounds that we needed to take care of immediately.

2 Q. And does that involve actually cutting the clothes off?

3 A. If they need to be, yes.

4 Q. All right. Did you continue to render aid to this
5 individual until medical professionals arrived?

6 A. Yes.

7 Q. And then what happened once the medical professionals
8 arrived?

9 A. Once the medical professional arrived, they put him in an
10 ambulance and began to transport him to Fairfax Hospital in
11 which I followed behind the ambulance until they got to the
12 hospital.

13 Q. And what happened once you and the ambulance ahead of you
14 arrived at the hospital?

15 A. Once at the hospital they immediately put him into the
16 emergency room and started to work on him and that's when they
17 advised me that the victim was deceased.

18 Q. And did you remain there at the hospital until detectives
19 came?

20 A. I did.

21 MR. BEN'ARY: Those are my questions, sir.

22 Mr. Jenkins will have some questions, sir. Thank you.

23 THE COURT: Cross.

24 MR. JENKINS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. JENKINS:

2 Q. Officer Wilson, I understand you've been with the Fairfax
3 County Police Department for five years?

4 A. Yes, sir.

5 Q. At the time when you arrived on the scene on October the
6 26th, 2019, I take it you had been on the police force for
7 three years up until that point, correct?

8 A. Yes, sir.

9 Q. This location that you arrived to, can you describe for
10 the jury whether or not it was a gated community?

11 A. Not a gated community.

12 Q. Is it fair to say that it is a community without any
13 controlled access?

14 A. Correct.

15 Q. Anyone can come and go as they please, correct?

16 A. Correct.

17 Q. And is it a densely populated apartment complex?

18 A. It is.

19 Q. Had that been your first time being called to respond to
20 that location?

21 A. I can't remember that specific address but that road, no,
22 sir.

23 Q. You had been called to that area before?

24 A. Yes.

25 Q. I take it you investigate other crimes?

1 A. Correct.

2 Q. That had been reported to you, correct?

3 A. Yes, sir.

4 Q. What type of crimes?

5 A. Any kind of -- you name it. From domestic disputes,
6 disorderly, narcotic events, every crime you can --

7 Q. Firearm offenses?

8 A. Yes, sir.

9 Q. Shootings?

10 A. Yes, sir.

11 MR. JENKINS: No further questions, Your Honor.

12 THE COURT: Redirect.

13 MR. BEN'ARY: No redirect.

14 THE COURT: Thank you, sir. Is this witness subject
15 to recall?

16 MR. BEN'ARY: Not from the government, Your Honor.

17 MR. JENKINS: No, Your Honor.

18 THE COURT: Very good.

19 Sir, please do not discuss the case or any aspect of
20 the case with anyone. You're free to leave.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 (Witness excused.)

24 MS. RUMBAUGH: The United States calls Joyce Brown.

25 (Government's witness, Joyce Brown, was sworn.)

1 THE COURT: Ma'am, if you're fully vaccinated and
2 you're comfortable doing so, you may remove your mask while
3 you're testifying.

4 (Witness seated.)

5 DIRECT EXAMINATION

6 BY MS. RUMBAUGH:

7 Q. Good morning, ma'am.

8 A. Good morning.

9 Q. Could you please state your full name for the benefit of
10 the jurors.

11 A. Joyce Brown.

12 Q. And ma'am, could you please spell your first and last
13 name for the court reporter?

14 A. Joyce, capital J, o-y-c-e, capital B, r-o-w-n.

15 Q. And, Ms. Brown, how old are you?

16 A. I'm 69.

17 Q. Where do you currently live?

18 A. I live in Lorton, Virginia.

19 Q. And previously, did you reside at 7112 Fairchild Drive in
20 Alexandria?

21 A. Yes, I did.

22 Q. Okay. Now, Ms. Brown, just a reminder to please speak up
23 so everyone can hear you. And if at any time you can't
24 understand my question or couldn't hear me, please just ask me
25 to repeat it, okay.

1 A. Okay.

2 Q. All right. Now, Ms. Brown, are you familiar with
3 Xyqwavius Brown or Qwa?

4 A. Yes, I am.

5 Q. Who is Qwa?

6 A. My first grandson.

7 Q. Okay. I'd like you to take a look at Government's
8 Exhibit 50 for me. And if the court security officer could
9 give her a hand that would be great.

10 Ma'am, do you have Exhibit 50, that's 5-0, in front
11 of you.

12 THE COURT: Do you have that in front of you, ma'am?

13 THE WITNESS: Yes, I do.

14 THE COURT: Thank you.

15 BY MS. RUMBAUGH:

16 Q. Ms. Brown, do you recognize that?

17 A. Yes, I do.

18 Q. What is that exhibit?

19 A. That's my grandson.

20 Q. Okay.

21 A. That was his high school dance.

22 MS. RUMBAUGH: I'd offer Exhibit 50 into evidence.

23 THE COURT: Without objection.

24 MR. JENKINS: No objection, Your Honor.

25 THE COURT: Without objection.

1 (Government's Exhibit No. 50 was admitted into evidence.)

2 MS. RUMBAUGH: Your Honor, may we publish it?

3 THE COURT: You may.

4 MS. RUMBAUGH: Your Honor, I think we're having some
5 technical difficulties. One moment, please.

6 THE COURT: Sure. In the meantime remove it from
7 the stack. Ms. Tinsley, take it out of the folder.

8 Sometimes with the technological advances that we
9 enjoy, it doesn't come to fruition. So what we're going to do
10 is, while the technical people from the government side are
11 trying to get it, we're going to pull out the photograph and
12 let you take a look at it individually.

13 MS. RUMBAUGH: Your Honor, I think we have the Elmo
14 working at this point.

15 THE COURT: Okay. Very good.

16 BY MS. RUMBAUGH:

17 Q. Ms. Brown, you said that Qwa Brown -- he was your
18 grandson, correct?

19 A. Yes.

20 Q. Was he the victim of a fatal shooting?

21 A. Yes.

22 Q. I'd like to direct your attention to late October of
23 2019. Were you living at 7112 Fairchild Drive at the time?

24 A. Yes, I was.

25 Q. And did Qwa live with you?

1 A. Yes, he did.

2 Q. Was anyone else living with you at the time?

3 A. I was just getting ready to get back my granddaughter,
4 but she was, you know, there off and on with me.

5 Q. Your granddaughter lived there with you as well?

6 A. Yes, also.

7 Q. Do you remember the night that Qwa was killed?

8 A. Yes, I do.

9 Q. What were you doing that evening?

10 A. I was watching TV.

11 Q. And was Qwa with you?

12 A. Yes, he was.

13 Q. At some point did Qwa walk out of the apartment?

14 A. Yes. He -- I said, "Where you going?" He said, "Me and
15 Nay," -- Nay, which is his sister -- "we're going to chill
16 tonight. We're going to watch some movies. I'll be right
17 back."

18 Q. Do you know what prompted him to walk out of the
19 apartment?

20 A. No, I don't.

21 Q. Did he have his phone with him?

22 A. I think he did.

23 Q. Do you remember if he got a call or a text message or
24 anything like that?

25 A. He could have.

1 Q. After he walked out of the apartment, what happened next?

2 A. After he walked out the apartment, I was watching
3 television and about -- I can't get the timing right on it
4 because of what I was watching. I'm trying to remember what I
5 was watching but I can't no more. So when he went out the
6 door, I don't know if it was 15 or 20 minutes or it could have
7 been five minutes, I just heard gunshots.

8 Q. Do you remember approximately how many gunshots you
9 heard?

10 A. I heard four.

11 Q. And what were you thinking when you heard the gunshot?

12 A. At the time I was thinking and hoping that I didn't want
13 it to be anyone. I sure didn't want it to be Qwa.

14 Q. At what point did you realize it was Qwa that had been
15 shot?

16 A. As time went on, I don't know how long it was, but as
17 time went on I said, "I better go to the door," but then I
18 didn't go to the door. Then I said, "No, I'm going to go to
19 the door," but by the time I went to the door I saw my
20 neighbor standing up in the hallway, and he said, "It's your
21 grandson." So someone's voice said, "Close the door. Do not
22 come out." So I remember closing my door and I fell to my
23 knees, and I cried, and I cried, and I cried by my neighbor
24 telling me it's my grandson, and I cried.

25 So when I got up from the floor, you know, I paced

1 back and forth through the house because I had my other
2 grandson, which was 2 at the time, was on the couch sleep, and
3 the eight-year-old was laying across my bed sleep. So I just
4 went to my closet and I fell on my knees again, and I cried,
5 and I cried, and I cried. I just kept crying. I didn't try
6 to get to the phone to call anyone or nothing like that, I
7 just kept crying. And then when I did get to myself, I paced
8 back and forth again, and then I called -- I called my cousin,
9 Jackie, to tell her we have to go to the hospital. You know,
10 I need to go to the hospital. She said, "What's wrong?" Then
11 I told her then on the phone it was Qwa. So from there, I
12 guess she couldn't get through because of what had happened.
13 They wouldn't let anybody in or out. And after that I --
14 Q. Ms. Brown, let me ask you this: Do you remember
15 approximately what time of night it was when Qwa exited the
16 apartment?

17 A. That's why I was trying to remember what I was watching.
18 If I could just remember what I was watching at the time, I
19 would know the time, but I think as time went on -- I think it
20 was around about -- it could have been before 12:00 or a
21 little after 12:00.

22 MS. RUMBAUGH: Nothing further from the government.

23 THE COURT: Mr. Jenkins.

24 MR. JENKINS: No questions, Your Honor. Thank you.

25 THE COURT: Is this witness subject to recall?

1 MS. RUMBAUGH: No, Your Honor.

2 THE COURT: Ma'am, you're free to leave. Please do
3 not discuss the case or any aspect of the case with anyone.

4 (Witness excused.)

5 MR. BEN'ARY: Your Honor, the government calls
6 Elijah Canady.

7 (Government's witness, Elijah Kyle-Canady, was sworn.)

8 THE COURT: Sir, if you're fully vaccinated and
9 you're comfortable doing so, you're free to remove your mask.

10 THE WITNESS: Excuse me?

11 THE COURT: If you're fully vaccinated and you're
12 comfortable doing so, you may remove your mask.

13 THE WITNESS: I'm not vaccinated.

14 THE COURT: Yes, sir.

15 MR. BEN'ARY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. BEN'ARY:

18 Q. Sir, I just want to make sure everyone hears, and you
19 don't have to repeat everything. There's a microphone in
20 front of you. If you can pull your chair up a little bit so
21 that you're speaking into the microphone to try to get through
22 this one time.

23 Good afternoon.

24 A. (Nods head.)

25 Q. Would you tell the members of the jury your full name,

1 please, and let me have you spell your first and last name?

2 A. Elijah Rashan Kyle-Canady. E-l-I-j-a-h,
3 K-y-l-e-C-a-n-a-d-y.

4 Q. And how old are you, sir?

5 A. 20.

6 Q. You're here pursuant to a subpoena this afternoon; is
7 that correct?

8 A. Yes.

9 Q. And -- is it -- do you have any agreements, whether in
10 writing or not in writing, between the U.S. Attorney's Office,
11 or the Fairfax Police Department, or the DEA having anything
12 to do with this case?

13 A. Can you, like, elaborate in what you're saying? I don't
14 really understand.

15 Q. Did you enter into any agreements about your testimony or
16 your coming to court today?

17 A. Yeah.

18 Q. What is that?

19 A. I don't really understand what you're asking me.

20 Q. You're here because you got subpoenaed as a witness,
21 right?

22 A. Right.

23 Q. Have you been given immunity or are there any written
24 agreements in place governing the terms of your testimony?

25 A. Yeah.

1 Q. What are they?

2 A. Immunity.

3 Q. What immunity do you understand that you have?

4 A. That I can't incriminate myself when I testify.

5 Q. And who was it that gave you that understanding?

6 A. Detective Wallace.

7 Q. I'm sorry?

8 A. Detective Wallace.

9 Q. And she's a Fairfax police detective?

10 A. Yes.

11 Q. Do you have anything in writing with her?

12 A. No.

13 Q. All right. Do you have any adult criminal convictions on
14 your record? Have you been convicted of any crime involving
15 lying, cheating, or stealing as an adult?

16 A. No, sir.

17 Q. And have you been involved as a juvenile in some theft
18 offenses involving an iPhone from a store and going into
19 vehicles?

20 A. Yes.

21 Q. And sir, do you use any drugs?

22 A. Yes.

23 Q. What drugs do you use?

24 A. Weed.

25 Q. Anything other than marijuana?

1 A. No.

2 Q. Have you used marijuana today prior to coming to court?

3 A. No.

4 Q. How frequently do you use marijuana?

5 A. Twice a day.

6 Q. And I want to draw your attention back to late October of
7 2019. At that time, were you friends with an individual named
8 Qwa Brown?

9 A. Yes.

10 Q. And how did you know Mr. Brown?

11 A. We grew up together.

12 Q. And did you know Mr. Brown to be a marijuana user as
13 well?

14 A. Yeah.

15 Q. At some point around late October 2019, did Mr. Brown
16 contact you about grabbing some weed from an individual that
17 he knew?

18 A. Yes.

19 Q. Did you know the person that Mr. Brown contacted you
20 about being involved in grabbing weed from?

21 A. No.

22 Q. Can you tell the members of the jury, essentially, what
23 the plan was that you discussed with Mr. Brown to grab this
24 marijuana from this other individual?

25 A. That we were just going to go up there and take it from

1 him. He was going to think that we was buying it and we were
2 going to take it.

3 Q. There's a little muffle, but did you --

4 A. I can say it again.

5 Q. Go ahead, please.

6 A. We had discussed that we were going to go up there and
7 take it from him and he was going to think that we were buying
8 it.

9 Q. Got it. Okay. Did you get together with Qwa to go
10 execute this plan?

11 A. Yes.

12 Q. And who was there?

13 A. Charles and my girlfriend.

14 Q. Okay. Do you know Charles's last name?

15 A. No.

16 Q. And did you proceed to a location to meet up with this
17 individual that was going to be the target for this taking?

18 A. Yes.

19 Q. And do you remember about where that was?

20 A. It was on Richmond Highway. I don't really know the
21 neighborhood name or anything like that.

22 Q. Do you live in that area?

23 A. No.

24 Q. And who was it that -- who was driving at the time?

25 A. My girlfriend. I had told her that -- if she could take

1 me to a friend house.

2 Q. And did she know where she was going?

3 A. No.

4 Q. Who was it that was directing her on where to go?

5 A. Qwa.

6 Q. And about what time was it that you all went with your
7 girlfriend driving and Qwa and Charles to this location; do
8 you remember?

9 A. Probably noon. A little bit past noon.

10 Q. Was it daylight out, do you remember?

11 A. Yes.

12 Q. And what happened when you got close to the spot that Qwa
13 was directing your girlfriend to drive to?

14 A. Me and Charles had got out the car and went up to the
15 house and went to the backyard, and that's where they had met
16 us at.

17 Q. Okay. Was the backyard enclosed -- was it a fenced
18 backyard?

19 A. Yeah. It was a fence, but it was kind of like an opening
20 on the side of the house that you can get into it, so.

21 Q. And what happened once you and Charles got to the
22 backyard?

23 A. We smelled the weed he was showing us and then Charles
24 took it and ran.

25 Q. Okay. And who was it that was showing you this weed?

1 A. Melvin.

2 Q. Did you know that individual prior to getting to the
3 backyard that day?

4 A. Melvin?

5 Q. Did you know Melvin prior to that day?

6 A. No.

7 Q. Did Qwa -- what did Qwa do while you and Charles went to
8 the backyard?

9 A. He was sitting in the car.

10 Q. What about your girlfriend?

11 A. In the car.

12 Q. All right. Was anyone with the individual, you've
13 identified as Melvin, when this weed was being looked at?

14 A. His friend.

15 Q. Did you know that individual?

16 A. No.

17 Q. So again, describe what happened when Melvin came --
18 well, first of all, did you see where Melvin came from?

19 A. His house.

20 Q. And what happened once he came outside?

21 A. He started showing the weed.

22 Q. About how much weed would you estimate it was?

23 A. It was just -- almost the size of the palm of my hand,
24 like that much.

25 Q. The size of the palm of your hand?

- 1 A. Yeah.
- 2 Q. You smoke weed twice a day, correct?
- 3 A. Uh-huh.
- 4 Q. Can you estimate about how much it was?
- 5 A. (Inaudible answer.)
- 6 Q. Did you ever buy an ounce of weed?
- 7 A. I can't really recall. It was --
- 8 Q. Less than a pound?
- 9 A. It was less.
- 10 Q. Okay. All right. And what happened when Melvin came out
- 11 of the house and was showing this small amount of weed?
- 12 A. Charles took it.
- 13 Q. What did he do when he took it?
- 14 A. He ran.
- 15 Q. What did you do?
- 16 A. I stayed right there.
- 17 Q. Why didn't you run also?
- 18 A. I was seeing what was going on. I was just watching.
- 19 Q. You were seeing what was going on?
- 20 A. Uh-huh.
- 21 Q. Did you know Charles was going to take it and run at that
- 22 moment?
- 23 A. Yeah.
- 24 Q. Is there a reason that you didn't run also?
- 25 A. Like I said, I was seeing what was going on.

1 Q. All right. And so, after Charles took the weed and ran,
2 what did you observe Melvin do?

3 A. He pulled something out of his waist.

4 Q. Did you see what it was?

5 A. From where I was standing it was just a black object. He
6 was, like, right on the porch of his backyard and I was at the
7 back of the fence, so it was pretty far.

8 Q. Okay. And what happened after he pulled this black
9 object out of his pants?

10 A. He put it back in.

11 Q. And you couldn't tell what it was?

12 A. Not clearly. Not clearly.

13 Q. Okay. Do you remember being asked a similar question to
14 this when you testified in front of the grand jury in this
15 matter?

16 A. I remember talking about it to Detective Wallace when I
17 was talking to her and she had showed me a picture of
18 something like, I think, a handgun or something like that, and
19 she had asked me did any of these look like it, and I told her
20 probably the first picture, but that's just what it looked
21 like.

22 Q. So it looked to you like it was a handgun?

23 A. Similar to it, yeah.

24 Q. And what happened after Melvin took this black object,
25 that looked like a handgun, out of his pants and put it back

1 in?

2 A. I walked off.

3 Q. Did he say anything to you?

4 A. No.

5 Q. Did you say anything to him?

6 A. No.

7 Q. Where did you go?

8 A. Walked back to my girlfriend's car.

9 Q. And was Qwa still in the car?

10 A. Yes.

11 Q. Was Charles in the car?

12 A. Yes.

13 Q. Where did you all go?

14 A. To my grandmother's house.

15 Q. And what did you do once you were at your grandmother's
16 house?

17 A. We smoked.

18 Q. Did you smoke any of the marijuana that Charles had taken
19 from Melvin?

20 A. Uh-huh.

21 Q. Was it, in fact, marijuana?

22 A. Yes.

23 Q. What happened after that?

24 A. I dropped Charles and Qwa off. I dropped Qwa off at his
25 house and dropped Charles off in Gantali (ph).

1 Q. About what time was it that you dropped Qwa off, do you
2 remember?

3 A. The sun was going down.

4 Q. Did you ever speak to Qwa Brown again?

5 A. Not after that night.

6 Q. When did you find out that Qwa had been shot and killed?

7 A. In the morning.

8 Q. And how did you find out?

9 A. My friends. We were in a group chat, and they had just,
10 like, was letting everybody know in the group chat what had
11 happened.

12 Q. The person that you've identified as Melvin and that came
13 out of the house with the weed on that occasion, do you see
14 him in the courtroom right now?

15 A. Yeah.

16 Q. Would you describe who he is by telling us where he's
17 sitting and what he's wearing?

18 A. Right here at the desk to the left of me.

19 MR. BEN'ARY: Let the record reflect the
20 identification of the defendant, Melvin Palma --

21 THE COURT: It shall.

22 MR. BEN'ARY: Those are my questions. Thank you.

23 THE COURT: Mr. Jenkins.

24 MR. JENKINS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. JENKINS:

2 Q. Good afternoon, sir.

3 A. (Nods head.)

4 Q. Do I understand it correctly? It is your understanding
5 that you have an immunity deal with Detective Wallace?

6 A. Uh-huh.

7 Q. And you told the jury that you smoked marijuana twice a
8 day, but you haven't had any marijuana today, correct?

9 A. No, sir.

10 Q. And how long have you been consuming marijuana twice a
11 day?

12 A. What do you mean by that; like, how long?

13 Q. Yeah. Have you been doing this for the past few weeks,
14 months, years, how long?

15 A. It's been going on for a while.

16 Q. Were you consuming marijuana at that rate back in 2019?

17 A. Yes.

18 Q. Were you smoking twice a day in October of 2019?

19 A. Yes.

20 Q. What about the day in which this robbery occurred, did
21 you smoke marijuana that day?

22 A. We didn't smoke anything before.

23 Q. You didn't smoke anything before, correct?

24 A. No, sir.

25 Q. But you did smoke after, correct?

1 A. Yes.

2 Q. What about the day before, did you smoke marijuana the
3 day before?

4 A. Yes.

5 Q. Do you remember the time of day, the day before, that you
6 smoked marijuana?

7 A. No.

8 Q. You don't?

9 A. (Nods head.)

10 Q. Did you smoke marijuana yesterday?

11 A. Yes.

12 Q. Did you smoke marijuana twice a day?

13 THE COURT: Mr. Jenkins, when he either nods or
14 shakes his head if you could identify for the record what his
15 answer is.

16 MR. JENKINS: Yes, Your Honor.

17 BY MR. JENKINS:

18 Q. Yesterday did you smoke marijuana twice?

19 A. Yes.

20 Q. And when you say you smoked marijuana, can you give us a
21 sense in terms of the quantity?

22 A. A "g."

23 Q. I'm sorry.

24 A. One gram.

25 Q. Is that on each occasion or is it -- a gram the total

1 amount you consume in a day?

2 A. Just two grams in a day for each time that I smoke. So
3 one gram each time.

4 Q. And when did you start this consumption habit?

5 A. When I started smoking?

6 Q. Yes.

7 A. Probably when I was 15 or 16.

8 Q. 15 or 16?

9 A. Yes.

10 Q. So -- and you're 19 now?

11 A. I'm 20.

12 Q. 20. So you've been smoking at this rate for five years?

13 A. That's correct.

14 Q. And you indicated that you were friends with Qwa,
15 correct?

16 A. Yes.

17 Q. And you knew Qwa to use marijuana, correct?

18 A. Yes.

19 Q. But you also knew that Qwa sometimes sold marijuana,
20 correct?

21 (A pause in the proceedings.)

22 THE COURT: Reask the question, Mr. Jenkins.

23 BY MR. JENKINS:

24 Q. Sir, you also know that Qwa sometimes sold marijuana, is
25 that not true?

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1 A. It could have been what Qwa had going on. Yes. It could
2 have been what he had going on.

3 Q. How long were you friends with Qwa?

4 A. I knew Qwa since middle school.

5 Q. I'm sorry?

6 A. I knew Qwa since middle school.

7 Q. Since middle school. So at the time of his death would
8 it be fair to say you had known Qwa for at least ten years?

9 (A pause in the proceedings.)

10 BY MR. JENKINS:

11 Q. Sir?

12 A. I can't really -- I'm sorry.

13 Q. Were you close friends with Qwa?

14 A. Yes.

15 Q. How often did you speak with Qwa?

16 A. Almost every day.

17 Q. You spoke with him almost every day, you described your
18 relationship as being close, correct?

19 A. (Inaudible answer.)

20 Q. You knew him well enough to know that he smoked
21 marijuana, correct?

22 A. Yes.

23 Q. But you're saying you don't know whether or not he
24 actually ever sold marijuana, is that your testimony?

25 (A pause in the proceedings.)

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1 BY MR. JENKINS:

2 Q. Is that your testimony, sir?

3 A. I'm just confused. Can we like --

4 Q. Well, let me ask you this, sir. When Qwa called you up
5 and propositioned you with this idea to go grab some
6 marijuana, you remember testifying about that, correct?

7 A. Yes.

8 Q. Do you remember what part of the day it was when you got
9 this call from Qwa?

10 A. It was in the -- it wasn't a call. It was, kind of, in
11 person when he told me about it.

12 Q. And did this surprise you?

13 A. Not really, no.

14 Q. It didn't surprise you that your friend that you had
15 known since middle school suggested to you, let's go grab some
16 marijuana, that didn't surprise you?

17 A. Because the plan was to smoke it.

18 Q. And the reason why it didn't surprise you is because this
19 wasn't the first time Qwa had done something like this with
20 you, was it?

21 A. No. Like the dude before, I said I had got caught going
22 into a store, running out with a phone, and going into a car,
23 so.

24 Q. No, sir. What I'm specifically talking about, this was
25 not the first time Qwa had suggested to you that, in essence,

1 let's go rob somebody?

2 A. No.

3 Q. He had done it before, correct?

4 A. This time when we had done it, it was before we were just
5 smoking weed.

6 Q. But you testified, have you not, that this was not the
7 first time, correct?

8 A. Correct.

9 Q. You weren't surprised when he suggested "let's go grab
10 some weed," correct?

11 A. Correct.

12 Q. Did you talk about using any weapons?

13 A. No.

14 Q. Did you talk about how you were going to accomplish this?

15 A. Yes.

16 Q. Who did you talk about it with?

17 A. Qwa.

18 Q. Did you talk about it with Charles?

19 A. Yes.

20 Q. And you formulated the plan with Qwa and Charles,
21 correct?

22 A. Yes.

23 Q. Each of you had a role, correct?

24 A. Yes.

25 Q. You knew what you were going to do, correct?

1 A. Yes.

2 Q. You knew what Charles was supposed to do, correct?

3 A. Yes.

4 Q. Again, because this wasn't the first time you'd been
5 engaged in this type of activity, correct?

6 A. Yes.

7 Q. And Qwa knew what his role was to be, correct?

8 A. Yes.

9 Q. Because again, this wasn't Qwa's first run at it,
10 correct?

11 A. Correct.

12 Q. This was something that you, Charles, and Qwa did. You
13 robbed drug dealers, correct?

14 A. We robbed Melvin, correct.

15 Q. Is Melvin the only drug dealer you ever robbed, is that
16 your testimony?

17 A. Yes.

18 Q. But you weren't surprised when Qwa suggested to you let's
19 go rob somebody?

20 A. Because the plan was to just smoke the weed.

21 Q. When you wanted to smoke weed, is it your testimony that
22 you would always go rob somebody?

23 A. No.

24 Q. Normally how did you obtain your weed?

25 A. We go buy it.

1 Q. You normally bought it, correct?

2 A. Correct.

3 Q. That is, you contacted a marijuana dealer, correct?

4 Correct?

5 A. Correct.

6 Q. You gave them money, correct?

7 A. Correct.

8 Q. And then he would give you the weed, correct?

9 A. Yes.

10 Q. But on this occasion you set out to rob a weed dealer,
11 correct?

12 A. Correct.

13 Q. And this wasn't a surprise to you?

14 A. (Inaudible answer.)

15 Q. Sir, you indicated that Melvin took something out of his
16 waistband, correct?

17 A. Correct.

18 Q. And you said to this jury that it was a black object,
19 correct?

20 A. Correct.

21 Q. But you don't know if it was a handgun or not, correct?

22 A. It came out of his waistband.

23 Q. I'm sorry?

24 A. It came out of his waistband.

25 Q. But you don't know if it was a handgun, correct?

1 A. From where I was standing, yeah, that's what it looks
2 like, but I'm not certain.

3 Q. And the reason why you didn't run, the real reason why
4 you didn't run is because you didn't want Melvin to know you
5 were in on it, correct?

6 A. No.

7 Q. Is that not true?

8 A. That's not true.

9 Q. So you agreed to participate in this robbery, correct?
10 Correct?

11 A. Correct.

12 Q. You told us that you knew what Charles' role was,
13 correct?

14 A. Yes.

15 Q. You told us that Qwa had a role, correct?

16 A. Yes.

17 Q. What exactly was your role?

18 A. To be there with Charles.

19 Q. For what purpose?

20 A. Just in case something happened to him.

21 Q. So your role was to provide physical presence?

22 A. Yes.

23 Q. In the event Melvin resisted, what were you to do?

24 A. Help Charles.

25 Q. And when you saw Melvin take out this object from his

1 waistband that appeared to be a black object that you thought
2 was a gun, what did you do?

3 A. I stood there.

4 Q. Well, I thought you said your role was to help protect
5 Charles -- to help Charles?

6 A. Charles had already ran off.

7 Q. And your purpose for remaining there wasn't to disguise
8 your involvement?

9 A. No.

10 Q. Melvin didn't fire off this thing that you thought was a
11 gun, correct?

12 A. No.

13 Q. Did he threaten anybody with it?

14 A. No.

15 Q. After Charles had ran off, how long did you stay in the
16 backyard with Melvin?

17 A. It wasn't long, probably five, eight seconds, and I
18 walked off.

19 Q. Did you tell Melvin at that time that you were involved
20 with this robbery?

21 A. I didn't speak to him.

22 Q. You didn't speak to him?

23 A. No.

24 Q. You didn't explain to him that you were there to help
25 Charles?

1 A. No.

2 Q. And then you left. Did you leave and get back in the
3 same car that brought you there?

4 A. Yes.

5 Q. That's the car that Qwa was in?

6 A. Yes.

7 Q. That's the car that Charles was in?

8 A. Yes.

9 Q. That's the car that your girlfriend was in?

10 A. Yes.

11 Q. And your testimony was, your girlfriend had no clue what
12 was going on, correct?

13 A. No.

14 Q. Just told her, "Hey, take me to a friend's house,"
15 correct? Is that correct?

16 A. Yes.

17 MR. JENKINS: I have no further questions, Your
18 Honor.

19 THE COURT: Redirect.

20 MR. BEN'ARY: Briefly.

21 REDIRECT EXAMINATION

22 BY MR. BEN'ARY:

23 Q. Sir, do you recall testifying in front of a grand jury
24 about this incident in February of 2020?

25 A. Yes.

1 Q. And do you recall being asked what happened after Charles
2 ran off with the weed?

3 A. Yes.

4 Q. And do you recall at that point you said, "And what
5 Melvin did, smacked his teeth, pulled a gun out of his waist.
6 He didn't point it at me, he put it back in his waist, and
7 went back in his house with his friends."

8 Do you recall if that was your testimony in front of
9 the grand jury?

10 A. Yes.

11 MR. BEN'ARY: That's my redirect. Thank you.

12 THE COURT: Mr. Jenkins, do we have any Sixth
13 Amendment issues with regard to the way the gentleman wears
14 his hair and the mask?

15 MR. JENKINS: No, Your Honor.

16 THE COURT: Okay. Thank you, sir.

17 Is he subject to recall?

18 MR. BEN'ARY: Not by the government.

19 THE COURT: All right, sir. Thank you. You may
20 step down, sir. Please do not discuss the case or any aspect
21 of the case with anyone.

22 (Witness excused.)

23 THE COURT: Ms. Tinsley.

24 (A pause in the proceedings.)

25 THE COURT: Next witness.

1 MR. BEN'ARY: Your Honor, respectfully, can I
2 suggest that we adjourn for our lunch break now. The next
3 witness is the medical examiner. It may take a few minutes.

4 THE COURT: Very good.

5 Ladies and gentlemen, we're going to go ahead and
6 let you take your mid-morning break or lunch. You heard me
7 say at the very beginning of the case and throughout the case,
8 please do not discuss the case or any aspect of the case with
9 anyone. We're beginning the process of presenting the case to
10 you, and obviously you're not to make any decisions regarding
11 this case until the case is submitted for your deliberations.

12 We're going to go ahead and let you take about 45
13 minutes. So come back about 1:15. Remember, we can't go
14 forward until all of you are back. There are plenty of
15 eateries that have sort of sprung up now around the
16 courthouse. Tomorrow we'll have a lunch for you brought in;
17 you'll be able to choose what you like to eat. But today,
18 you'll have to leave the facility.

19 I remind you, if you see any lawyers about, it's
20 okay to say good afternoon. And it's okay for them to say
21 good afternoon to you. Again, we cannot start the case until
22 you all are back. So we look forward to seeing you at 1:15.
23 Again, your contact is Ms. Tinsley. You may now retire.

24 (Jury excused.)

25 **A F T E R N O O N P R O C E E D I N G**

1 (Court proceedings resumed at 1:26 p.m.)

2 THE COURT: I hope everyone had the benefit of a
3 good lunch and ready to go with the second part of the day.

4 Do we need to do anything before we bring the jury
5 in?

6 MR. BEN'ARY: Can I just discuss the afternoon
7 schedule briefly, Your Honor?

8 THE COURT: Yes.

9 MR. BEN'ARY: So good news and bad news.

10 THE COURT: Give me the bad news first.

11 MR. BEN'ARY: We may run out of witnesses before
12 4 o'clock. The good news is we're dramatically ahead of
13 schedule.

14 THE COURT: That doesn't surprise me.

15 MR. BEN'ARY: And so, we have done what we can to
16 get enough witnesses to try to get close to 4:00, but there's
17 another group of witnesses that we had anticipated tomorrow
18 that probably aren't going to be able to get here in time to
19 go on. I think if it goes the way we think it's going to go,
20 we should only have four witnesses tomorrow. So we are done
21 with more than half of our case.

22 THE COURT: Well, I appreciate that. I appreciate
23 both you and Mr. Jenkins, and Mr. Flores, in your efforts to
24 present this case in an efficient manner. And so, obviously,
25 I'm not going to get in the way of that. If we get out a

1 little early today that's fine.

2 MR. BEN'ARY: Thank you, Your Honor.

3 THE COURT: And, again, I appreciate how hard
4 everyone is working on this case.

5 You say that you think you're going to -- you
6 say that -- ladies and gentlemen, if you can come in and sit
7 down. We're trying to conduct business.

8 If you had to guesstimate when your entire case is
9 going to be complete -- and the reason why I'm asking this
10 question is because I like to give the jury some sort of sense
11 of how we're doing things so they can plan their day. What
12 would you say to that, sir?

13 MR. BEN'ARY: So I do think we have five witnesses
14 tomorrow. My guess is that on a couple of them it will be a
15 little bit longer cross-examination, but I still think we have
16 a reasonable chance at finishing no later than mid-afternoon
17 tomorrow. If not, a little bit earlier than that.

18 THE COURT: Very good. Very good.

19 Mr. Jenkins, what's your suggestion on that?

20 MR. JENKINS: Your Honor, I concur with government
21 counsel. I think we're going to, knowing the witnesses they
22 have planned for this afternoon, we're probably going to be
23 done in the next hour-and-a-half.

24 THE COURT: Okay.

25 MR. JENKINS: You know we're probably going to be

1 done with them. And then tomorrow, based on what I
2 anticipate, the witnesses, at least two of them, probably are
3 going to be more lengthy in terms of cross-examination, but I
4 also anticipate that we'll be done by lunch.

5 THE COURT: Very good. Thank you. I appreciate
6 your hard work, Mr. Jenkins.

7 Ms. Tinsley, we can bring the jury back in.

8 (Jury present.)

9 THE COURT: Good afternoon ladies and gentlemen.
10 You may be seated.

11 Good afternoon, ladies and gentlemen. I need to ask
12 you this question and you're going to get sick of me asking
13 it, but I have to ask it all the time. Were all of you able
14 to live up to the Court's instructions and not discuss the
15 case or any aspect of the case with anyone?

16 All right. Very good. Let the record reflect that
17 the jury is reseated. Ladies and gentlemen, I have a little
18 bit of good news for you. We're doing very well in the
19 management of our time. And so, if you were planning
20 something on Friday this week, I think we will be done before
21 we get to that date. So the lawyers are working really hard
22 on this case, and we appreciate their diligence and their
23 approach in trying to get the work done and respecting your
24 time and commitment. So we're doing very well, so if you
25 could continue to be as attentive as you have been throughout

1 this case, we will still stay on that good course.

2 Next witness for the government.

3 THE GOVERNMENT: Your Honor, thank you. The United
4 States calls Dr. Jocelyn Posthumus.

5 THE COURT: Interesting name for a forensic. Can't
6 make it up sometimes.

7 (Government's witness, Jocelyn Posthumus, was sworn.)

8 THE COURT: Doctor, if you have been fully
9 vaccinated and you're comfortable doing so, you may remove
10 your mask while testifying.

11 THE WITNESS: Okay. That's fine.

12 MR. BEN'ARY: May I proceed, Your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION

15 BY MR. BEN'ARY:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Would you tell the members of the jury your name, and
19 please spell your first and last name.

20 A. Yes. It's Jocelyn Posthumus, J-o-c-e-l-y-n
21 P-o-s-t-h-u-m-u-s.

22 Q. And, ma'am, how are you employed?

23 A. I'm the assistant chief medical examiner here in the
24 State of Virginia at the northern district office, which is
25 located in Manassas.

1 Q. What kind of work do you do?

2 A. I perform autopsies and external examinations in order to
3 determine a cause and manner of death.

4 Q. And can you give the jury a brief summary of your
5 training in that area, please?

6 A. Certainly. So I received my medical degree from Robert
7 Wood Johnson, which is in New Jersey, followed by a four-year
8 pathology residency at the University of Virginia in anatomic
9 and neuropathology. Subsequently, a one-year fellowship
10 specialized training in forensic pathology at Virginia
11 Commonwealth University here in Richmond.

12 Q. And do you have a CV, a curriculum vitae, that sets forth
13 your training and experience?

14 A. Yes, I do.

15 Q. With the assistance of the court security officer, would
16 you take a look at what's been marked as Government
17 Exhibit 10, please -- I'm sorry, 9.

18 No, I was right.

19 THE COURT: 9. 10 is the curriculum.

20 MR. BEN'ARY: Yup, 10 is the curriculum vitae.

21 Please take a look at Exhibit 10 there.

22 THE WITNESS: Yes.

23 BY MR. BEN'ARY:

24 Q. Is that a copy of your CV?

25 A. Yes.

1 Q. Is it accurate?

2 A. Yes.

3 MR. BEN'ARY: I move to admit Government's Exhibit
4 10.

5 THE COURT: Without objection.

6 MR. JENKINS: Without objection.

7 (Government's Exhibit No. 10 was received into evidence.)

8 THE COURT: And I offer the witness as an expert in
9 medical examination.

10 MR. JENKINS: No objection, Your Honor.

11 THE COURT: No objection. She is so admitted as an
12 expert in that particular science.

13 BY MR. BEN'ARY:

14 Q. And have you been qualified as an expert in this field in
15 court prior to today?

16 A. Yes, I have.

17 Q. Did you perform an autopsy on an individual named
18 Xyqwavius Brown on or about October 26, 2019?

19 A. Yes, I did.

20 Q. And can you describe, briefly, the process of performing
21 that examination on a decedent for the members of the jury,
22 please.

23 A. Certainly. So as part of an autopsy we do an external
24 examination of the body which includes photographing. In this
25 particular case, X-rays or radiographs were also performed. I

1 collect any potential evidence on the body. This is followed
2 by cleaning the body, undressing, and then fully documenting
3 any injuries and/or identifying features, followed by an
4 internal examination where I look at the internal organs to
5 diagnose any underlying natural disease processes or trauma,
6 followed by the drawing of fluids for potential toxicology,
7 and subsequently issuing a death certificate and writing an
8 autopsy report.

9 Q. Did you, in fact, prepare an autopsy report documenting
10 your findings for this particular examination?

11 A. Yes, I did.

12 Q. And now I will ask you to, please, look at Government's
13 Exhibit 9.

14 A. Yes.

15 Q. Do you recognize that?

16 A. Yes, I do.

17 Q. What is that?

18 A. This is a copy of my autopsy report, including view
19 diagrams on Mr. Brown.

20 Q. And is that a true and accurate copy of your report?

21 A. Yes, it is.

22 MR. BEN'ARY: I'd offer Government's Exhibit 9 into
23 evidence.

24 MR. JENKINS: No objection, Your Honor.

25 THE COURT: Without objection.

1 (Government's Exhibit No. 9 was received into evidence.)

2 BY MR. BEN'ARY:

3 Q. Does that report contain your findings and conclusions to
4 a reasonable degree of medical certainty?

5 A. Yes, it does.

6 Q. I'm going to ask you a couple of follow-up questions on
7 some of those findings.

8 Could you describe for the members of the jury,
9 evidence -- any evidence that you found of bullet wounds on
10 Mr. Brown's body?

11 A. Certainly. There were two gunshot wounds to Mr. Brown.
12 The most significant was a gunshot wound to the head with
13 recovery of a bullet. The second was a gunshot wound to the
14 arm, which is perforating or through-and-through. So no
15 bullet was recovered.

16 Q. And you mentioned before that your process includes
17 taking photographs. Did you have occasion to take photographs
18 of those injuries on this body?

19 A. Yes, I did.

20 Q. Could I ask, with the assistance of the court security
21 officer, do you have the binder up there?

22 Could you take a look, please, first at Government's
23 Exhibit 11B? It should be behind the 11. Second photograph.

24 A. Yes.

25 Q. Is that a photograph that you took?

1 A. Yes, it is.

2 Q. And what is it a photograph of?

3 A. This is a photograph of the gunshot wound entrance to the
4 right arm.

5 Q. And is it a fair and accurate depiction of what you saw
6 when you conducted this medical exam?

7 A. Yes, it is.

8 MR. BEN'ARY: I'd offer Exhibit 11B into evidence.

9 MR. JENKINS: No objection, Your Honor.

10 THE COURT: Without objection. 11B.

11 MR. BEN'ARY: I would ask that it be published to
12 the jury, please.

13 THE COURT: Without objection.

14 (Government's Exhibit No. 11B was received into evidence.)

15 (Exhibit published.)

16 BY MR. BEN'ARY:

17 Q. Again, now that the photo is up. Can you give a brief
18 description of what it is that the jury is looking at?

19 A. So right below or to the right of the ruler you see a
20 darkened, blackened circular or ovoid lesion. There is some
21 blood coming out of it but that is the gunshot entrance wound.

22 Q. And is there a way that you can distinguish an
23 entrance -- a gunshot entrance wound from an exit wound?

24 A. Yes.

25 Q. And can you explain that to the jury, please?

1 A. So by definition a gunshot entrance wound you cannot
2 reapproximate the edges. So what that means is, when the
3 bullet strikes the skin, you lose that tissue and the bullet
4 takes that portion of tissue with it through its wound path.

5 In addition, I also look for evidence of gunshot
6 residues on the skin, which would also support that it's an
7 entrance. There are no gunshot -- visible gunshot residues
8 associated with this injury.

9 Q. And did you locate an exit wound that corresponds to this
10 entrance wound?

11 A. Yes, I did.

12 Q. Could you take a look, please, at the photograph that
13 comes right before in the binder, 11A.

14 A. Yes.

15 Q. And what is that a photograph of?

16 A. This is a photograph of the gunshot exit wound to the
17 right arm.

18 Q. And is that a fair and accurate photograph of what you
19 remember seeing when you conducted the medical examination?

20 A. Yes, it is.

21 MR. BEN'ARY: Can I offer Exhibit 11A into evidence,
22 please?

23 MR. JENKINS: Without objection.

24 THE COURT: Without objection.

25 (Government's Exhibit No. 11A was received into evidence.)

1 MR. BEN'ARY: And I'd ask that it be published for
2 the jury, please.

3 THE COURT: Without objection.

4 (Exhibit published.)

5 BY MR. BEN'ARY:

6 Q. So again, now that the photo is up, can you just briefly
7 describe what it is that the members of the jury are looking
8 at?

9 A. So directly above the ruler you'll see an area of redness
10 and absence of tissue. That is the gunshot exit wound. And
11 to orient you -- so we're looking at the back of the right
12 arm, near the armpit or the axilla. Mr. Brown's head is to
13 the right of the photograph.

14 Q. And he would be lying face down -- oriented when this
15 photograph was taken?

16 A. Correct.

17 THE COURT: Mr. Jenkins, do you anticipate any
18 objection to 11C, D, or E?

19 MR. JENKINS: I do not, Your Honor. No objection.

20 THE COURT: Thank you, sir.

21 MR. BEN'ARY: Thank you. Then would you publish,
22 please, 11C.

23 BY MR. BEN'ARY:

24 Q. And, Dr. Posthumus, if you could turn to it in the binder
25 if that helps you.

1 Could you describe for the members of the jury what
2 we are looking at here?

3 A. So this photograph is a lateral view of Mr. Brown's right
4 side of his body, and what you can appreciate is that pink
5 rod. It's called a trajectory rod. And I insert that through
6 the entrance and exit to give you an idea of the trajectory or
7 the wound path that the bullet took.

8 Q. And based on your findings, does the rod, as inserted
9 here, accurately depict the trajectory of the round that went
10 in through Mr. Brown's front, right shoulder, and exited
11 through the back of his arm?

12 A. Yes, it does.

13 Q. I have just two additional photos to show you of the
14 second bullet wound to Mr. Brown's head.

15 MR. BEN'ARY: Could we publish 11D, please.

16 BY MR. BEN'ARY:

17 Q. All right. And can you describe, for the members of the
18 jury, what that is a photograph of?

19 A. So this photograph is a picture of Mr. Brown's top of his
20 head, and you can see that I have shaved some of the hair
21 around the wound. And while there are two defects in this
22 photograph, it represents the gunshot entrance wound. And
23 then subsequent pictures, I'll be able to describe it, is a
24 unique entrance where the bullet strikes the head and the
25 skull at an acute or sharp angle and immediately fragments.

1 So the reason why in this picture you see two holes
2 is, one of the fragments exits while the remainder of the
3 fragmented and deformed bullet enters the head with recovery
4 of that remaining bullet.

5 Q. When you say "recovery of that remaining bullet" can you
6 just tell the jurors what that means?

7 A. So after removing the skullcap and examining the brain,
8 the deformed jacketed bullet was recovered or identified
9 within the brain itself. I collected that and then receipted
10 it to law enforcement.

11 Q. And I'm going to ask to publish 11E to have you describe
12 what this photo tells you about the injury. And I won't leave
13 it up there for longer than necessary, but could you describe
14 what the jurors are looking at here, please.

15 A. So this is that distinctive entrance wound that I started
16 to describe in the prior photograph. It's called a keyhole
17 entrance. It's called that because it looks like a keyhole
18 from your standard door. What you see at the top of the head
19 is that large oblong defect where it has a sharp edged-out
20 edge towards the front, and then it has a crater look towards
21 the back. Again, this is a keyhole and it's one bullet that
22 strikes the skull at a very sharp angle.

23 MR. BEN'ARY: Thank you. You can take that down.

24 BY MR. BEN'ARY:

25 Q. Did you reach a conclusion to a reasonable degree of

1 medical certainty of the manner and cause of Xyqwavius Brown's
2 death?

3 A. Yes, I did.

4 Q. And can you describe your findings to the jury, please?

5 A. The cause of death is gunshot wounds to the head and
6 upper extremity, and the manner of death is homicide.

7 Q. And I hear that you're -- you've described both bullet
8 wounds as part of the cause of death; is that correct?

9 A. Correct.

10 Q. And why is that?

11 A. Obviously, the most impactful and immediately lethal
12 wound is the gunshot wound to the head. However, the gunshot
13 wound to the arm does contribute to blood loss and is
14 potentially lethal in the long term.

15 MR. BEN'ARY: Thank you, Doctor. Mr. Jenkins may
16 have questions for you.

17 THE COURT: Cross.

18 MR. JENKINS: No, thank you, Your Honor.

19 THE COURT: Thank you, ma'am.

20 Is this witness subject to recall?

21 MR. BEN'ARY: Not from the United States, Your
22 Honor.

23 THE COURT: Mr. Jenkins.

24 MR. JENKINS: No, Your Honor.

25 THE COURT: Thank you, ma'am. Please do not discuss

1 the case or any aspect of the case with anyone while the case
2 is pending. Thank you.

3 THE WITNESS: Yes.

4 (Witness excused.)

5 MR. BEN'ARY: The next witness is Detective Michael
6 Roberts.

7 THE COURT: Michael Roberts.

8 (Government's witness, Detective Michael Roberts, was sworn.)

9 THE COURT: Sir, if you're fully vaccinated, and
10 you're comfortable doing so, you may remove your mask while
11 testifying.

12 THE WITNESS: Yes, sir.

13 (Witness seated.)

14 MR. BEN'ARY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. BEN'ARY:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Would you tell the members of the jury your full name,
20 please.

21 A. Michael Roberts.

22 Q. Common spelling on both?

23 A. Correct.

24 Q. How are you employed?

25 A. I'm a detective with the Fairfax County Police

1 Department.

2 Q. Is there a particular part of the police department to
3 which you are assigned?

4 A. Yes. I'm a member of the crime scene section.

5 Q. And how long have you been employed with the police
6 department overall?

7 A. Overall, just around 20 years now.

8 Q. And how many years focusing on crime scene?

9 A. With major crimes it has been six years.

10 Q. And can you briefly describe some of your
11 responsibilities with the crime scene unit for the members of
12 the jury, please?

13 A. As a crime scene detective, it is our job to collect and
14 document physical evidence at a crime scene. We'll document
15 it through photographs, through diagrams, measurements. And
16 once we've identified it, we'll -- with the physical evidence,
17 we'll collect the evidence and bring it back with us to our
18 section where we'll either possibly process it for latent
19 prints; or send it out for analysis through another section
20 through Department of Forensic Science; or secure it and then
21 store it in a property room.

22 Q. And do you have specialized training and experience in
23 matters related to shooting reconstruction, crime scene
24 processing, and homicide cases?

25 A. I do.

1 Q. And have you testified in other trials in your capacity
2 as a crime scene detective?

3 A. I have.

4 Q. Do you have a curriculum vitae that describes your
5 training and experience?

6 A. I do.

7 Q. Is that binder in front of you? If not, could I ask that
8 the binder be presented to Detective Roberts. And I'm going
9 to ask you to take a look at Exhibit 2, please.

10 Is Exhibit 2 a copy of your curriculum vitae?

11 A. It is.

12 MR. BEN'ARY: I'd offer Exhibit 2 into evidence.

13 MR. JENKINS: No objection.

14 THE COURT: Without objection.

15 (Government's Exhibit No. 2 was received into evidence.)

16 MR. BEN'ARY: And I would offer Detective Roberts as
17 an expert in the area of crime scene investigation
18 reconstruction.

19 THE COURT: Mr. Jenkins?

20 MR. JENKINS: No objection, Your Honor.

21 THE COURT: So recognized.

22 BY MR. BEN'ARY:

23 Q. Detective, did you participate in crime scene
24 investigation at 7112 Fairchild Drive on October 26, 2019?

25 A. I did.

1 Q. And was it in your capacity as a member of the crime
2 scene unit?

3 A. Yes. I was the lead crime scene detective on scene.

4 Q. And did you undertake -- you and your colleagues,
5 undertake procedures to secure that scene and to document
6 evidence and the location of evidence?

7 A. We did.

8 Q. Can you give the members of the jury a sense of what that
9 entailed?

10 A. So when we arrived to the scene, it had already been
11 secured by the patrol officers -- initial responding units.
12 And the only ones on scene, at that time, when I arrived were
13 a few patrol and other major crimes detectives. At the time
14 we received a briefing on what had happened and where the
15 initial responding officers had possibly located evidentiary
16 items. We then did a walkthrough of the scene and identified
17 those items along with other items that could possibly be
18 collected from the scene.

19 Q. At that point when you conducted the bulk of your work,
20 was the victim still on scene?

21 A. No, he was not.

22 Q. Was part of your task to mark -- I think you said "marked
23 items of evidence" and photograph their location before
24 they're collected?

25 A. Correct.

1 Q. And in the binder that you have in front of you, there's
2 a whole series of exhibits behind tab 1 that goes from 1A all
3 the way to -- I think 1 --

4 THE COURT: Double V.

5 MR. BEN'ARY: Double V. Just take a quick look
6 through those if you don't mind.

7 (A pause in the proceedings.)

8 BY MR. BEN'ARY:

9 Q. Are those all photographs taken as part of the crime
10 scene investigation into this particular incident?

11 A. Yes, they are.

12 MR. BEN'ARY: Offer 1A through 1VV into evidence.

13 MR. JENKINS: No objection, Your Honor.

14 THE COURT: Without objection 1 single A, all the
15 way through 1 double V, as in "Victor."

16 (Government's Exhibit Nos. 1A - 1VV was admitted into
17 evidence.)

18 MR. BEN'ARY: Thank you.

19 BY MR. BEN'ARY:

20 Q. I'm going to ask you to describe what they are in detail.

21 MR. BEN'ARY: Could we publish 1A, please?

22 BY MR. BEN'ARY:

23 Q. What is this a photograph of?

24 A. This is a photograph of the apartment complex as you're
25 looking into the stairwell of 7112.

1 Q. And there's some traffic cones there. What are those?

2 A. Those traffic cones were placed there by initial
3 responding units to mark cartridge cases that they had located
4 prior to our arrival.

5 Q. Could you look at 1D, as in "David," please?

6 What is this a photograph of?

7 A. This is a photograph of the -- at the top of the stairs
8 looking down into the entrance of the same building.

9 Q. And there appears to be some discoloration down the right
10 side of the steps. Based on your involvement in this crime
11 scene investigation, what is that?

12 A. All the red staining down on the right side of the
13 stairways appeared to be blood.

14 Q. And as we look at this picture, the fourth step, is that
15 the fourth step from the top of the staircase? So we're
16 looking from the top of the staircase down; is that right?

17 A. Yes. We're at the top of the staircase looking down.

18 Q. Would you please --

19 MR. BEN'ARY: Can we publish 1E?

20 BY MR. BEN'ARY:

21 Q. What is this a photograph of?

22 A. This is the same stairwell at the bottom of the stairs
23 looking up.

24 Q. There are some items on some of the stairs there, were
25 those items that were there when you encountered the scene?

1 A. Yes, they are.

2 Q. And there's a door straightaway at the top of the steps.

3 Did you do some additional investigation into that
4 doorway at the top?

5 A. Yes.

6 Q. And why was that?

7 A. There were two defects in the door when we arrived on the
8 scene. Upon closer examination, it appears to be bullet
9 strikes and a bullet hole. So we continued our examinations
10 of those.

11 Q. Could you turn to 1W, please?

12 What is that a photograph of?

13 A. This is a photograph of three pieces of evidence that
14 were on the stairs leading up towards the top landing.

15 Q. It looks like an iPhone, a slide, and a lighter, is that
16 what those are?

17 A. Correct, yes.

18 Q. And let me have you look, please, at 1UU.

19 What is that?

20 A. 1UU is one of the blood stains that's on the stairs near
21 the bottom of the stairs.

22 Q. And on that second stair, is that one of the larger areas
23 of blood collection when you conducted this investigation?

24 A. Yes, it is.

25 Q. And 1VV, please. Same stair from a different angle?

1 A. Correct.

2 Q. Did you and your colleagues locate any casings and
3 projectiles when you conducted this investigation?

4 A. Yes. We located three cartridge cases on the scene and
5 two projectiles and a fragment.

6 Q. Can you explain to the members of the jury what a
7 cartridge casing is, please?

8 A. When you're looking at a bullet, you have the cartridge
9 case which is the base part where it holds the primer, it
10 holds the bullet in the top, and all the powder inside.

11 Q. And in a semiautomatic handgun, what happens to the
12 cartridge casing when it's fired?

13 A. Once the cartridge -- the gun is fired, the slide, due to
14 all the gases, is forced to the rear and ejects the cartridge
15 case usually out the right side of the gun.

16 Q. Not the case in a revolver, correct?

17 A. No. In a revolver it stays in the cylinder.

18 Q. And the other object mentioned was a projectile. What is
19 the projectile?

20 A. The projectile is anything that comes out the end of a
21 gun. In this case it would be bullets.

22 Q. All right. I'm going to have you look at a couple of
23 additional exhibits here. Please take a look at Exhibit 1B as
24 in "Bravo."

25 What is this?

1 A. This is the picture of the front of the 7112. This is
2 the morning after we arrived. So we had collected all the
3 evidence by this time, and those yellow markings, or tent
4 placards, that we had -- we had placed it by each piece of
5 evidence just to indicate the evidence.

6 Q. Okay. And a close look at this photo -- can you see the
7 locations of what was marked as Fairfax County Police Exhibits
8 10, 11, and 12?

9 A. Yes, you can.

10 Q. And what are those exhibits?

11 A. 10 and 11 are cartridge cases, 12 was a bullet.

12 MR. BEN'ARY: And could you publish 1Y, please?

13 BY MR. BEN'ARY:

14 Q. So that's a closer-up that shows the location of 10 and
15 11?

16 A. Yes.

17 Q. And 8 and 9 too. But 10 and 11 are the firearms
18 evidence?

19 A. Yes, they are.

20 Q. And so, just to orient, the stairway that is depicted in
21 the other pictures would be straight -- sort of, straight up
22 the cement portion there to the left?

23 A. Correct. The top of the picture would be the landing,
24 just inside the stairwell.

25 MR. BEN'ARY: Could you publish 1Z, please?

1 BY MR. BEN'ARY:

2 Q. A close-up depicting the location of Fairfax, Exhibit 10?

3 A. Yes. That is also a cartridge case.

4 Q. And let's pull up 1AA.

5 What is that?

6 A. That is a close-up of the number 10, the cartridge case.

7 Q. And 1EE, please.

8 A. Yes. It's another close-up photograph of the same
9 cartridge case.

10 MR. BEN'ARY: Could you, please, publish 1BB?

11 BY MR. BEN'ARY:

12 Q. What are we looking at there?

13 A. This is the location of the other cartridge case, number
14 11, on -- actually on the concrete walkway.

15 Q. And there's a little metallic object right on the edge
16 there, is that the cartridge casing?

17 A. Yes, it is.

18 Q. 1CC, please.

19 Is that just a closer-up of the same item of
20 evidence?

21 A. Correct, it is.

22 MR. BEN'ARY: Let's skip ahead to 1FF.

23 BY MR. BEN'ARY:

24 Q. What is Fairfax evidence item 12?

25 A. That's a bullet on the sidewalk just to the left of the

1 entrance of the apartment complex.

2 Q. So a projectile, if we're splitting the items up into
3 casings and projectiles?

4 A. So that would be a projectile, correct.

5 Q. Okay. And if you look back at -- can we look back at 1B
6 quickly. 12 is in the foreground to the left of the walkway
7 into the building?

8 A. Yes, it is.

9 Q. And is that the location that that item was found?

10 A. Yes, it is.

11 MR. BEN'ARY: Could you pull up 1TT, please?

12 BY MR. BEN'ARY:

13 Q. It looks like there is a number tent to the left there.
14 Do you recall what item this was?

15 A. Yes. That's item 18. That's a cartridge case that was
16 found under that wooden ramp on the right side of the
17 entrance.

18 MR. BEN'ARY: And would you pull up 10, please?

19 BY MR. BEN'ARY:

20 Q. Different photograph, what is this?

21 A. That's a fragment that we located on the fifth step up
22 from the bottom landing. It's a copper fragment that was
23 sitting on the middle of that step.

24 Q. These shell casings and projectiles, after they're
25 photographed and documented, what do you do with them?

1 A. In this case, the fragment was sent for storage. The
2 projectiles and the cartridge cases were sent to the
3 department of forensic science for analysis.

4 Q. And why is the fragment sent to storage instead of for
5 further analysis?

6 A. It's a small portion of the projectile. They are not
7 going to be able to look at it to figure out caliber or get
8 any significant kind of details off of it.

9 Q. Did you and your colleagues also collect the clothes that
10 the victim was wearing?

11 A. We did.

12 Q. And where did -- where were they located?

13 A. They were located on scene on the landing at the base of
14 the stairs.

15 Q. And can you see them in Exhibit 1A?

16 A. Yes, you can.

17 Q. Can you point out to the members of the jury, where they
18 were found?

19 A. If you're looking at the stairs to the left, there's that
20 black item on -- right there hanging over that first step on
21 the landing. That would be the sweatshirt. And then over on
22 the right side by the ramp, that wooden ramp is the pair of
23 jeans.

24 Q. And those were collected. And did you perform some
25 additional inspection analysis on those items?

1 A. Yes, I did.

2 Q. Could you look at a series of photos 1H, I, J, K, L, M,
3 N, please. And actually go ahead and look at F and G as well.

4 A. Yes.

5 Q. Are those photographs of the clothing that was collected
6 there from the scene, plus F and G, which depict an item that
7 was removed from the pocket of the jeans?

8 A. Yes, they do.

9 MR. BEN'ARY: Offer 1H through -- did I offer these
10 already? Are these included in what I offered and were
11 admitted already?

12 THE COURT: My notes indicate yes.

13 MR. BEN'ARY: Okay. Could we pull up 1H, please?

14 BY MR. BEN'ARY:

15 Q. Is this the black sweatshirt that you pointed out its
16 location a moment ago?

17 A. Yes, it is.

18 Q. And did you examine this item of clothing to see if there
19 were any defects consistent with bullet holes?

20 A. I did.

21 Q. And did you find any bullet holes?

22 A. I did.

23 Q. Notice, if you look closely, there are clips -- metal,
24 sort of, binder clips that appear to be holding the shirt
25 together.

1 Do you know anything about how those cuts got into
2 the item of clothing?

3 A. Yes. The cuts up the sleeve and across the chest of both
4 sides are consistent with the way rescue removes clothing off
5 of injured persons. So the binder clips were placed on there
6 by me in an attempt to reform the sweatshirt to make it look
7 and appear as it would have before it was cut.

8 Q. If you look at Exhibit 1I, please. What is that a photo
9 of?

10 A. That is a picture of a hole that I found on the upper
11 right arm of his sleeve.

12 Q. And based on your knowledge, training, and experience, is
13 that consistent with a bullet entry hole?

14 A. Yes, it is.

15 Q. Could you look at 1K, please? A closer look at the same
16 defect in the shirt?

17 A. Yes, it is.

18 Q. If you look, please, at 1L. What is that?

19 A. 1L is the back of the right sleeve on the sweatshirt.
20 There's a hole on the upper right arm consistent with an exit
21 of a bullet strike.

22 Q. And there's white underneath it. Is that the mannequin
23 underneath that you can see through the hole of the article of
24 clothing?

25 A. Yes, it is.

1 MR. BEN'ARY: And could you pull up M -- 1M, please?

2 BY MR. BEN'ARY:

3 Q. Again, is that just a closer view of the same defect?

4 A. It is.

5 MR. BEN'ARY: Could you pull up 1N, please?

6 BY MR. BEN'ARY:

7 Q. What is this?

8 A. These are the jeans that we recovered from the scene off
9 of the ramp.

10 Q. Were there any bullet -- or any defects in this article
11 of clothing consistent with bullet holes based on your
12 examination of the article?

13 A. No, there were not.

14 MR. BEN'ARY: And would you pull up 1F, please?

15 BY MR. BEN'ARY:

16 Q. What is 1F?

17 A. 1F were the contents of the front left pocket of the
18 jeans.

19 Q. And it's documented there on the envelope; is that
20 correct?

21 A. Yes, it is.

22 MR. BEN'ARY: And pull up 1G, please.

23 BY MR. BEN'ARY:

24 Q. What is that?

25 A. That is the -- that was that baggy that was in the front

1 left pocket of the jeans. It was a piece of a torn bag that
2 was tied in a knot. Once it was untied, inside was the
3 marijuana in that plastic bag. I had placed it in the plastic
4 bag for -- just to secure it separate from the other piece of
5 evidence.

6 Q. So the clear zip lock-type plastic bag on the right there
7 was provided by the police department?

8 A. Yes, it was.

9 Q. All right. I mentioned earlier that the door that was at
10 the top of the steps -- you said you did some additional
11 investigation on that door, correct?

12 A. Yes.

13 MR. BEN'ARY: Could you pull up 1SS?

14 BY MR. BEN'ARY:

15 Q. Is that the door that -- is that directly at the top of
16 the steps as you were looking at it in those other
17 photographs?

18 A. Yes. That's the door to apartment 203.

19 Q. And what -- what is significant, that you can point out
20 to the members of the jury, in this picture?

21 A. That there are two defects in the door. One is on the
22 left-hand side just above the dead bolt. And then the second
23 defect is lower, to the -- on the right-hand side, which is
24 actually a bullet hole.

25 Q. And did you conduct some additional analysis on those two

1 defects?

2 A. I did.

3 Q. 1C, please. Is that a closer-up view of the defect above
4 the keyhole?

5 A. Yes, it is.

6 Q. And 1QQ, please. Again, same, just a closer-up view?

7 A. Yes, it is.

8 Q. And 1PP. What is that that we're looking at?

9 A. That is, again, just a closer-up photograph of the same
10 defect.

11 Q. And what can you tell the members of the jury about this
12 defect and directionality of the projectile that caused it?

13 A. So this picture is oriented as you would be staring at
14 it. So this is -- the top is, obviously, at the higher end of
15 the picture. So it appears to be a ricochet from a
16 projectile. You can see at the bottom part, there's a fine
17 line which indicates that the bullet is coming in at either
18 a -- usually a lower angle. And as it travels across the
19 surface, it starts to gouge or dig into the surface and then
20 pops out because it doesn't have enough force to actually
21 penetrate through whatever the surface is. In this case, it
22 was the steel surface of the door.

23 Q. And is this consistent with finding fragments of
24 projectiles back towards the sidewalk and the stairs area?

25 A. Yes. Once a bullet or a projectile strikes an object, it

1 has the ability to fragment in many number of pieces or
2 different size pieces.

3 MR. BEN'ARY: Let's look at 100, please.

4 BY MR. BEN'ARY:

5 Q. What is that?

6 A. OO is the bottom half of the same door. It's showing the
7 defect in the lower right side.

8 Q. And how would you describe that defect?

9 A. That is an entry hole for a projectile.

10 MR. BEN'ARY: Can we look at 1T?

11 BY MR. BEN'ARY:

12 Q. What is 1T?

13 A. 1T is the inside of the door directly behind the defect
14 on the lower right side of the door. So this would be an exit
15 for that projectile.

16 Q. And how would you describe -- it looks like there's a
17 hole and then there's something below the hole.

18 What are we looking at here?

19 A. The hole is actually the lower portion of this. What had
20 happened was, is the projectile penetrates from the inside
21 through to the exterior of the door. It starts to bend the
22 metal in, sort of, a cone-shaped. And what had happened in
23 this case is it didn't completely separate the part of the
24 door. So it took that flap and actually bent it upward as the
25 bullet exits.

1 Q. Can you look at 1R, please?

2 All right. So just to give an orientation, if
3 you're looking at the view that we just saw of the inside of
4 that defect in the door, what is -- what would be right behind
5 you?

6 A. So yeah, there's a set of bifold doors behind you.

7 Q. And what is 1R a picture of?

8 A. It is a picture of those bifold doors.

9 Q. And what is significant that you can see from this
10 picture?

11 A. There is a bullet defect entering the exterior side of
12 the door.

13 Q. And what was inside that closet when you conducted the
14 investigation?

15 A. We located numerous coats. One of which had a projectile
16 stuck to the front side of it.

17 Q. Can you look at 1II, please?

18 What is that?

19 A. That is a leather jacket that was immediately inside the
20 bifold doors. That was a hole that had penetrated through the
21 sleeve.

22 Q. And there's -- it looks like some debris to the -- on
23 that sleeve as well?

24 A. Yes. The inside of the door was made of fiber-like
25 board, almost like a cardboard. And that's the debris -- is

1 just the pieces and flakes of that fiber board that had been
2 blown or knocked off as the bullet went through.

3 Q. And did you locate the projectile that caused the defect
4 in the -- outer door, closet door, and this jacket?

5 A. Yes.

6 Q. Could you look at 1LL, please?

7 What is that?

8 A. That's a picture of the projectile hanging off the front
9 of a peacoat.

10 Q. As you encountered it when you conducted your
11 investigation?

12 A. Yes. I had to move that leather jacket to the side and
13 this was hanging there.

14 Q. All right. Were you able to conduct a trajectory
15 analysis on this projectile?

16 A. Yes.

17 Q. And what do you need in order to accomplish a trajectory
18 analysis?

19 A. So to do a trajectory analysis, we have rods and cones,
20 which we stick through the defect in order to find a -- the
21 path -- the most likely path it had taken, and we had also
22 used protractors and angle finders to get the azimuth and
23 inclination of the bullet as it's traveling.

24 Q. Could you do a trajectory analysis on the ricochet the
25 same way you did it on the round that went through the door?

1 A. No. So when you need to do a trajectory analysis, you
2 need two points of the same projectile. With a ricochet, you
3 only have that one deflection.

4 Q. Could you look at 3A through -- let's go all the way
5 through 5, please. So 3A through F, and then 4 and 5.

6 THE COURT: Mr. Jenkins, assuming a proper
7 foundation, are you going to have any objection to 3A through
8 5?

9 MR. JENKINS: No, Your Honor.

10 THE COURT: Very good.

11 BY MR. BEN'ARY:

12 Q. So briefly, are 3A, B, C, D, E, F, photos that show your
13 placement of rods and the protractor as you conducted your
14 trajectory analysis?

15 A. Yes, they are.

16 MR. BEN'ARY: We offer those into evidence, please.

17 MR. JENKINS: No objection.

18 THE COURT: Without objection.

19 (Government's Exhibit Nos. 3A, B, C, D, E, F were received
20 into evidence.)

21 BY MR. BEN'ARY:

22 Q. And 4 and 5 are diagrams that were prepared that show the
23 results of this analysis?

24 A. Correct.

25 Q. And are they accurate based on your training and

1 experience in trajectory analysis?

2 A. Yes, they are.

3 MR. BEN'ARY: I'm going to offer 4 and 5 as well.

4 THE COURT: Without objection.

5 (Government's Exhibit Nos. 4 and 5 were admitted into
6 evidence.)

7 MR. BEN'ARY: Can we pull up 3A, please?

8 BY MR. BEN'ARY:

9 Q. What are we looking at on 3A?

10 A. So 3A is -- on the right side of the picture is the
11 inside of the metal door to the apartment. And inside the
12 defect is a -- that purple rod is the trajectory rod. And
13 then in the middle of the defect that -- the black cone is
14 called a centering cone. This is designed to center that rod
15 into the defect.

16 Q. And as it lines up, is it consistent with a projectile
17 traveling through the exterior door and then striking the
18 closet door where that hole is located?

19 A. Yes, it is.

20 Q. If you look at 3 -- let's skip to 3E, please.

21 Go to E, sorry. What is this?

22 A. So this is the outside of the same defect. The
23 trajectory rod is -- and the cone are centering it on the
24 defect.

25 Q. All right.

1 MR. BEN'ARY: 3C, please.

2 BY MR. BEN'ARY:

3 Q. What are we looking at on 3C?

4 A. So 3C we are at the base of the stairs and took a
5 photograph directly up the stairs. And in the middle of that
6 defect you can see the tip of the trajectory rod and the
7 centering code in there indicating that the -- the projectile
8 was -- came from this direction.

9 Q. All right. Let's look at Exhibit 4, which is the first
10 of your diagrams.

11 All right. Can you just walk the members of the
12 jury through what this diagram sets out, please.

13 A. So at the top left is a diagram of the outside of the
14 door. The red dotted lines are measurements indicating its
15 height is 1 foot 8 inches from the floor and then 1 foot and a
16 quarter inch from the -- the right side doorframe. The hinge
17 side of the door.

18 And then the center photo at the top is the same
19 door. This is inside of the door. Again, it's showing that
20 it's about 1 foot 8 inches from the floor and a foot from the
21 same side of the doorframe, the hinge side of the doorframe.
22 And then the measurement above that is a -- to the same
23 defect, it's to the same hole. Except, instead of going to
24 the doorframe, we actually went to the wall just to the left
25 side of the door. And the reason we did that was because when

1 we get over to the bifold doors that were behind us, which is
2 the top right photo, we couldn't measure, obviously, from the
3 same doorframe, we had to measure from the wall. So we
4 measured from the wall again and got 1-foot, three-and-a-half
5 inches, and then it was 2-feet, nine inches from the floor.

6 And then the bottom picture on the left, as you see,
7 there's a stairwell, which is the front door, and then the
8 closet door is on the left side of the picture. And it just
9 shows you the triangulation of the two bullet -- of the --
10 sorry. The triangle is a 20-degree angle, and it shows the
11 20-degree angle from the hole in the front door to the hole in
12 the back door. The 20 degrees is the actual trajectory that
13 we determined was the path of the bullet.

14 Q. And then what's that last diagram there on the --

15 A. Oh, I'm sorry. The last one is the horizontal angle. So
16 as you're outside of the door, looking at the door, we use a
17 zero-degree protractor to measure this. So zero would be at
18 the flat plane of the door, 90 degrees would be perpendicular
19 to the door.

20 So with this we were 87 degrees from a left to right
21 angle indicating that the projectile was going from left to
22 right, and at an 87-degree angle as it hit the door and went
23 through the door.

24 MR. BEN'ARY: Can we pull up Exhibit 5, please?

25 BY MR. BEN'ARY:

1 Q. Can you walk the members of the jury through this
2 diagram?

3 A. So this is a cutaway view of the -- of the front of the
4 building, the stairs leading from the landing up to the
5 apartment, and then the exterior door and the bifold door.

6 You can see the same measurements for the height
7 from the floor to the defect in the bifold door and in the
8 exterior door. The same measurements from the last exhibit.
9 And then we just connected them with that 20-degree line and
10 if you extend that 20-degree line, it comes down to the
11 pathway below.

12 Q. And so the trajectory, as you measured it, is the
13 dotted --

14 A. The dotted green line.

15 Q. With the arrow at the right end of it?

16 A. Yes.

17 Q. What is the non-dotted line connected by the two dots
18 that leads up the stairs there?

19 A. Oh, that -- that is the handrail on the side of the
20 stairs.

21 Q. And is the trajectory that you measured consistent with
22 the location of the shell casings that were found and
23 collected?

24 A. Yes, it was.

25 Q. In addition to this part of the investigation, were you

1 also involved in a search warrant on December 30, 2019, at the
2 defendant's residence?

3 A. Yes, I was.

4 Q. And did you basically perform the same tasks to include
5 taking photographs of -- of items that were seized as
6 evidence?

7 A. Yes, I was.

8 Q. And could you look at all of Exhibit 12, please.

9 Are those all photographs taken during the execution
10 of the search warrant that I just mentioned, December 30,
11 2019?

12 A. Yes, they are.

13 MR. BEN'ARY: I would move in the 12 series of
14 exhibits. I think it's A through double A.

15 MR. JENKINS: No objection, Your Honor.

16 THE COURT: Without objection. 12A through 12AA.
17 (Government's Exhibit Nos. 12A through 12AA were admitted into
18 evidence.)

19 BY MR. BEN'ARY:

20 Q. Did you and your colleagues locate a stack of United
21 States currency during the execution of this search warrant?

22 A. We did. We found a stack of currency on the -- sitting
23 on the middle of the bed in plain view wrapped with two rubber
24 bands around either end.

25 MR. BEN'ARY: Could you pull up 12N, please?

1 BY MR. BEN'ARY:

2 Q. Is that a photograph of the stack of cash as --

3 A. Yes, it is.

4 Q. -- as you encountered it?

5 A. Yes, it is.

6 Q. And 12O, please. Side view of the same stack?

7 A. It is. Correct.

8 Q. And did the police department count the U.S. currency

9 pictured in this stack?

10 A. We did.

11 Q. And how much, approximately, was it?

12 A. It was, approximately, \$3,234.

13 Q. And there's several photographs laying it out to be

14 counted, correct?

15 A. Yes.

16 Q. Let's go to 12M, please, as in "Michael."

17 What is this?

18 A. This is a wallet that we recovered out of the room.

19 Q. Was it the same room as the stack of currency was in?

20 A. Yes, it was. It was on the same bed.

21 Q. Did you and your colleagues also locate a backpack with

22 several items in it in the same room?

23 A. Yes, we did.

24 Q. Okay.

25 MR. BEN'ARY: And let's pull up 12E, please.

1 BY MR. BEN'ARY:

2 Q. What is that?

3 A. This is a backpack -- as you walked in the door, this was
4 just to the right of the door at the base of that red ottoman
5 and it was inside of the room.

6 Q. And did you and your colleagues examine the contents of
7 that backpack and take additional photographs?

8 A. We did.

9 Q. And let's take a look at Exhibit 12F, please.

10 Are those some of the contents of the backpack laid
11 out?

12 A. Yes, they are.

13 Q. What are those items?

14 A. So the item in the foreground is a food saver. Directly
15 behind that are FoodSaver bags. At the top of the picture is
16 a sealed FoodSaver bag with marijuana in it. And then to the
17 right of that is a mason jar, again, with marijuana in it.

18 Q. FoodSaver is like a vacuum sealer; is that correct?

19 A. Yes, it's a vacuum sealer. It takes the air out of those
20 plastic bags and then seals them to keep the air out.

21 MR. BEN'ARY: 12Y, please.

22 BY MR. BEN'ARY:

23 Q. What is 12Y?

24 A. 12Y is a digital scale that was also found in that
25 backpack.

1 Q. Did you and your colleagues additionally locate a rifle
2 along with magazines and ammunition?

3 A. We did.

4 MR. BEN'ARY: Could you pull up 12H, please?

5 BY MR. BEN'ARY:

6 Q. What is that?

7 A. That is a rifle that we located in the closet of the
8 bedroom. It was on the floor in plain view.

9 Q. And did you locate magazines and ammunition that would be
10 accepted by this rifle?

11 A. Yes. In this photo, the magazine is seated in the rifle.
12 It's a 30-round magazine which was loaded with 30 rounds of
13 223 ammunition, which is what the rifle takes.

14 Q. And were there other similar caliber rounds as well as
15 other magazines?

16 A. Yes. There were two more magazines. Again, both of
17 those magazines were 30-round magazines, also loaded with 30
18 rounds. And there was a box of ammunition sitting on the
19 dresser with the same 223 rounds sitting in that box.

20 Q. In addition to that caliber of ammunition, did you and
21 your colleagues locate small caliber ammunition as well?

22 A. We did.

23 MR. BEN'ARY: And could you show 12J, please?

24 BY MR. BEN'ARY:

25 Q. What is that?

1 A. Those are three .45-caliber cartridges that were found in
2 a Nike shoe box underneath the bed in the bedroom.

3 Q. And did you find any handguns -- pistols during the
4 execution of this search warrant?

5 A. No, we did not.

6 Q. And last couple of questions for you.

7 Did you also perform examination of two handwritten
8 letters for the presence of latent fingerprints?

9 A. Yes, I did.

10 Q. And in the binder there, could you look at Exhibits 34
11 and 35.

12 A. Yes.

13 Q. Did you perform an examination of both of those letters
14 to look for latent fingerprints?

15 A. I did.

16 Q. Did you identify latent fingerprints on each of those
17 letters?

18 A. Yes, I did.

19 Q. And did you submit your results to the section of the
20 police department that conducts fingerprint comparison
21 analysis?

22 A. I did.

23 MR. BEN'ARY: Court's indulgence. One moment,
24 please, Your Honor.

25 THE COURT: Yes, sir.

1 (A pause in the proceedings.)

2 MR. BEN'ARY: Detective, thank you. Mr. Jenkins may
3 have some questions for you.

4 THE COURT: Mr. Jenkins.

5 MR. JENKINS: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JENKINS:

8 Q. Good afternoon, Detective.

9 A. Good afternoon.

10 Q. Detective, I want to take you back to when you first
11 arrived on the crime scene.

12 Now, I understand it was your job to process the
13 crime scene, correct?

14 A. Correct.

15 Q. When I say "process," it is to collect whatever items you
16 might find to be of evidentiary value, correct?

17 A. Yes.

18 Q. Because the goal is to assist law enforcement or to put
19 law enforcement in a position to be able to identify who may
20 have perpetrated the crime, correct?

21 A. Correct.

22 Q. And one of the things that you've explained to us here
23 today is that you take photographs to document the scene,
24 correct?

25 A. Correct.

1 Q. And you may also, as you've testified here today, create
2 certain diagrams, correct?

3 A. Correct.

4 Q. And again, this is all for the purpose of assisting law
5 enforcement to be able to identify who may have perpetrated
6 the offense, correct?

7 A. Yes.

8 Q. Now, you indicated, also, that you collected, or you
9 located at this scene, some bullet casings, correct?

10 A. Yes.

11 Q. And those are the outer shell of a bullet, correct?

12 A. Yes.

13 Q. It's the portion that is expelled from a semiautomatic
14 when the firearm is discharged, correct?

15 A. Yeah, it is. That's not the only place it comes from,
16 but, yes.

17 Q. You also, if I understand you correctly, testified that
18 one of the things that you would typically do with those
19 bullet casings is to submit them to the department of forensic
20 science for latent print examination, correct?

21 A. No. In this case we did not submit them for latent print
22 examination.

23 Q. Well, I'm not asking you whether you did --

24 A. Oh, okay.

25 Q. -- or not, I'm asking, is that a reason you would have to

1 collect the casings?

2 A. That's one of the reasons, yes, we could, yes.

3 Q. And that's because, based on your training and
4 experience, you've learned that sometimes when someone loads a
5 firearm with a bullet, they may leave a fingerprint on the
6 casing, correct?

7 A. Correct.

8 Q. And so your purpose for you collecting the casing at a
9 crime scene, at least one purpose, is for you to submit it to
10 the department of forensic science so they could examine it to
11 determine whether a fingerprint was actually left on the
12 casing, correct?

13 A. Yes.

14 Q. And in this case I think you've already testified, you
15 didn't do that, correct?

16 A. Correct.

17 Q. So you can't tell this jury whether or not the
18 defendant's fingerprint was found on any of the casings that
19 you collected, correct?

20 A. Correct.

21 Q. Now, you also, in diagram Exhibits 4 and 5 -- can you get
22 those in front of you and could you put up 4?

23 Now, this Exhibit 4, this is one of your diagrams
24 that you created in order to help explain the trajectory of
25 one of the bullets that went through the door and ended up in

1 the closet, correct?

2 A. Correct.

3 MR. BEN'ARY: And if you could go to Exhibit 5.

4 BY MR. BEN'ARY:

5 Q. Now, Exhibit 5 is, again, a diagram created by you,
6 correct?

7 A. No. I did not physically create the diagrams. The
8 information, the data that was collected by me, another
9 detective actually put it all together in the diagram.

10 Q. But --

11 A. But it was through -- it was created from the information
12 that I collected, correct.

13 Q. From the data you supplied?

14 A. Yes.

15 Q. And the goal of this diagram is to demonstrate to the
16 viewer where, based on your data, the bullet traveled,
17 correct?

18 A. Yes.

19 Q. Now, what it does not tell us is anything about the
20 shooter, correct?

21 A. No, it does not.

22 Q. It doesn't tell us his height, for example, correct?

23 A. No.

24 Q. It doesn't tell us if it was a male or a female, correct?

25 A. No.

1 Q. It doesn't tell us if he was black?

2 A. No.

3 Q. It doesn't tell us if he was white?

4 A. No.

5 Q. Or whether he was Hispanic, correct?

6 A. No.

7 Q. It just shows the trajectory of the bullet, correct?

8 A. Yes.

9 Q. Now, in your search of the defendant's bedroom, I'm going
10 to take you to Government's Exhibit 12J.

11 Now, these are the small caliber bullets that were
12 found in the defendant's bedroom, correct?

13 A. Correct.

14 Q. And when I say "small" that is in comparison to what is
15 depicted in Government's Exhibit 12K, correct?

16 A. No, these are the same bullets.

17 Q. But you did find a different set of bullets, correct?

18 A. Yes. We found these 45 -- three .45-caliber cartridges
19 and then we also found rifle cartridges.

20 Q. Now, the casings that you recovered from the crime scene,
21 were you able to determine the caliber of those casings?

22 A. Yes. The cartridge cases were 9-millimeter.

23 Q. They were 9-millimeter, correct?

24 A. Yes.

25 Q. And what you found in the defendant's room were -- which

1 is depicted in Government's Exhibit 12J, those are not
2 9-millimeter ammunition, correct?

3 A. No, they're not.

4 Q. They're .45-caliber, correct?

5 A. Yes.

6 Q. That's different than 9-millimeter, correct?

7 A. It is.

8 Q. Different from what you found on the crime scene,
9 correct?

10 A. Yes.

11 Q. Now, you also found some larger -- would you describe
12 them as shotgun ammunition?

13 A. No, they're rifle ammunition.

14 Q. Rifle ammunition.

15 A. Yes.

16 Q. And am I also correct that the rifle ammunition that you
17 found in the defendant's bedroom didn't match up with the
18 casings found at the crime scene, correct?

19 A. No, no.

20 Q. They were different, correct?

21 A. Yes.

22 Q. They weren't 9-millimeter casings -- bullets, correct?

23 A. No.

24 MR. JENKINS: Your Honor, I believe those are all
25 the questions that I have.

1 THE COURT: Mr. Ben'Ary.

2 MR. BEN'ARY: May I have the Court's indulgence for
3 one moment?

4 THE COURT: You may.

5 (Counsel confers.)

6 MR. JENKINS: Your Honor, I forgot to ask maybe two
7 or three more questions.

8 THE COURT: Yes.

9 MR. JENKINS: Thank you.

10 BY MR. JENKINS:

11 Q. Detective, when you use the term in your profession
12 "latent prints," I know maybe laymen might think only
13 fingerprints and that wouldn't be true, correct?

14 A. No.

15 Q. Latent prints goes beyond just fingerprints, correct?

16 A. Yes.

17 Q. For example, someone in your line of work may also take a
18 latent print of a footprint?

19 A. Yes.

20 Q. Is that correct?

21 A. Correct.

22 Q. Because sometimes when we walk we leave footprints behind
23 on hard surfaces, correct?

24 A. Yes.

25 Q. And you actually have a way in which you can lay

1 something on the ground, and do some other things, and pull up
2 that print, correct?

3 A. Yes, we do.

4 Q. And then you can use that to match to a particular
5 suspect's, let's say, footing that you believe they may have
6 been wearing when the crime was committed, correct?

7 A. The shoe -- are you about shoe wear now?

8 Q. Yes.

9 A. Yes. Yes, we can do that.

10 Q. And that's also called a latent print, correct?

11 A. We call it "shoe wear." It is a type of latent print,
12 yes.

13 Q. But that's something that you do, correct?

14 A. Yes, we do that.

15 Q. In processing a crime scene, correct?

16 A. Yes.

17 Q. Now, let me ask you, what about on natural surfaces, like
18 grass or soil?

19 A. On soil, yes.

20 Q. So, for example, like, what is depicted in the photograph
21 that you took right outside of where the shooting occurred.

22 MR. JENKINS: What series is that?

23 MR. BEN'ARY: One.

24 MR. JENKINS: One. Court's indulgence. If you can
25 get 1B up.

1 BY MR. JENKINS:

2 Q. Now, in this picture right here we see some -- a little
3 grassy area, correct?

4 A. Yes.

5 Q. Where soil is, correct?

6 A. Yes.

7 Q. Now, if someone were to walk in that area, for example,
8 they could leave their shoe marking behind, correct?

9 A. They could, yes.

10 Q. And that could assist you with being able to identify a
11 particular suspect, correct?

12 A. Yes.

13 Q. And what you would do in order to capture that, unlike
14 the hard surface, is that you would use a -- a mold, correct?

15 A. Yes, we could.

16 Q. Where you actually pour something on the ground and it
17 helps to capture those prints, correct?

18 A. We could, yes.

19 Q. And that's a useful tool in your investigative work,
20 correct?

21 A. It is.

22 Q. It's something that can be very helpful in identifying a
23 particular suspect, correct?

24 A. In this case it would identify, like I said, a pair of
25 shoes. It would not identify an individual person.

1 Q. Well, at least be able to identify a pair of shoes,
2 correct?

3 A. Yes.

4 Q. That could be connected to a particular perpetrator,
5 correct?

6 A. Correct, yes.

7 Q. And in this situation right here you didn't do that
8 either, correct?

9 A. We did not -- we did not have the opportunity to do any
10 shoe wear, no.

11 Q. Well, you didn't do it, correct?

12 A. No, we didn't.

13 MR. JENKINS: No further questions.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. BEN'ARY:

17 Q. Detective, why didn't you do any of the shoe wear
18 analysis that --

19 A. We didn't locate any shoe wear. We looked through the
20 area for different shoe wear. It is dirt and there's -- a lot
21 of the grass is gone. But it was hard-packed dirt and was not
22 conducive to leaving any kind of impressions.

23 Q. All right. And counsel asked you about submitting the
24 cartridge casings for latent fingerprint analysis?

25 A. Yes.

1 Q. He asked you if you submitted them, you said you did not.

2 A. We did not.

3 Q. Why not?

4 A. Through fingerprint analysis it could be detrimental to
5 doing any kind of a firearms examination. By using super glue
6 or chemicals to process for latent prints could actually
7 damage the microscopic details that they're looking for.

8 Q. And so, you and your colleagues chose to have the rounds
9 examined for ballistic tool markings as opposed to risking
10 that being degraded by latent fingerprint examination?

11 A. Yes, we did.

12 Q. And the shell casings from the scene were successfully
13 compared to one another, correct?

14 A. Yes, they were.

15 MR. BEN'ARY: Thank you, Your Honor.

16 THE COURT: Is this witness subject to recall?

17 MR. BEN'ARY: Not by the government, Your Honor.

18 THE COURT: Mr. Jenkins.

19 MR. JENKINS: No, Your Honor.

20 THE COURT: All right, sir. You're not subject to
21 recall. Please do not discuss the case or any aspect of the
22 case with anyone now that the case is pending.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Thank you, sir.

25 (Witness excused.)

1 THE COURT: Counsel, I believe that this is probably
2 a pretty good time to take our mid-afternoon break. So let's
3 do that.

4 Ladies and gentlemen, I'm going to give you until
5 3 o'clock. It might be a good time to maybe get a piece of
6 candy, or drink of water, or something to get us through the
7 rest of the day. So we'll see you back here at 3 o'clock.
8 Please remember the Court's instruction not to discuss the
9 case until the case is finally submitted to you.

10 (Jury dismissed and a break was taken.)

11 (Court resumes.)

12 THE COURT: Anything we need to do before we bring
13 the jury in?

14 MR. BEN'ARY: Your Honor, once they come in but
15 before the witness takes the stand, I would propose to offer
16 in the telecommunications record pursuant to the 902.11. So
17 it would be 43AB, 44AB, 45AB.

18 THE COURT: Without objection, Mr. Jenkins?

19 MR. JENKINS: No objection, Your Honor.

20 THE COURT: Thank you, sir.

21 (Government's Exhibit Nos. 43AB, 44AB, 45AB were received into
22 evidence.)

23 THE COURT: Anything else?

24 MR. BEN'ARY: No, Your Honor. If it's before 4:00
25 and the witness is done, we can at least take advantage of the

1 time by offering in the stipulations that we've reached.

2 THE COURT: That's fine. That was my thought based
3 upon your suggestions on how we might be on time. I'm
4 anticipating that this is going to be the last witness of the
5 day?

6 MR. BEN'ARY: This is it for -- that we have
7 available for the afternoon.

8 THE COURT: Very good. That's fine. And then you
9 can read the stipulations in as you choose at the time that
10 you choose.

11 MR. BEN'ARY: Okay. Thank you.

12 THE COURT: What I'll do is I'll give, sort of, a
13 preliminary instruction as to what a stipulation is. That way
14 they will have the opportunity to evaluate it appropriately.

15 MR. BEN'ARY: Thank you.

16 THE COURT: Okay. Ms. Tinsley, thank you.

17 (Jury present.)

18 THE COURT: Let the record reflect that the jury is
19 reseated. We're back on the record in the United States of
20 America versus Melvin Palma Flores.

21 Ladies and gentlemen, I'm assuming you, once again,
22 lived up to the Court's instruction not to discuss the case or
23 any aspect of the case with anyone.

24 This is going to be the last witness for today. I
25 will give you some little thought as to how we're going to

1 proceed going forward. We're going to -- there are some
2 exhibits that the parties have agreed are admissible. I'm
3 sure Mr. Ben'Ary will make reference to them. They are 43AB,
4 44AB, and 45AB. Those were admitted by agreement.

5 In addition to that, ladies and gentlemen, I believe
6 that the government is, at some point during the course of the
7 afternoon, going to read something called a stipulation into
8 the record. A stipulation is an agreement by the counsel that
9 what a person would have said on the stand is what they're
10 going to read. You are to give it whatever appropriate weight
11 you want to give it just as if the person had testified on the
12 stand in your vision.

13 So I believe that's where we're going to be today.
14 And just in case I don't remember, we're going to be starting
15 tomorrow at 10:00. So that gives you a little bit more time
16 and less traffic to fight as you come in. I don't think we
17 ever get the opportunity to not fight traffic when we're
18 coming in here, but it will give you a little bit better
19 opportunity to do that. So tomorrow we'll start at 10:00.

20 Remember, we can't start until all of you are here.
21 So if you could get here around 9:45 that would be great and
22 we'll go -- we'll start our business at about 10:00 tomorrow.

23 Mr. Ben'Ary.

24 MR. BEN'ARY: And, Your Honor, can I just real quick
25 for the record identify what those 43 and 44 exhibits are?

1 THE COURT: Yes, sir.

2 MR. BEN'ARY: So 43A are AT&T business records for
3 cell site location data and call detail records for a certain
4 phone number, 571-344-3993.

5 43B is a declaration by a records custodian that
6 these are business records.

7 44A are also AT&T records for a network event
8 location system, NELOS data, associated with that same phone
9 number.

10 44B is the certificate from the records custodian
11 from AT&T related to those records.

12 45A are business records of Sprint/T-Mobile for a
13 separate phone number.

14 And then 45B is a certificate from the records
15 custodian for Sprint/T-Mobile.

16 THE COURT: Thank you, sir. Next witness.

17 MR. BEN'ARY: The next witness is Fairfax County
18 Police Department analyst, Kara White.

19 THE COURT: Ms. White.

20 (Government's witness, Kara White, was sworn.)

21 (Witness seated.)

22 THE COURT: Ma'am, if you're fully vaccinated and
23 you're comfortable doing so, you may remove your mask while
24 you're testifying.

25 THE WITNESS: Okay. Thank you.

1 MR. BEN'ARY: May I proceed, Your Honor?

2 THE COURT: Yes.

3 DIRECT EXAMINATION

4 BY MR. BEN'ARY:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Would you tell the members of the jury your name, and let
8 me have you go ahead and spell your first and last name.

9 A. My name is Kara White. Spelled K-a-r-a, last name is
10 White, W-h-i-t-e.

11 Q. And how are you employed?

12 A. I'm a crime analyst with the Fairfax County Police
13 Department.

14 Q. And how long have you been employed as a crime analyst
15 with the county police department?

16 A. For 21 years.

17 Q. And do you have experience dealing with cellular phone
18 data?

19 A. Yes, I do.

20 Q. A particular data involving the location of cellular
21 telephones?

22 A. Yes.

23 Q. And have you examined business records from cellular
24 service providers in connection with your job in cases other
25 than this one?

1 A. Many times, yes.

2 Q. And have you testified as an expert before in the
3 analysis of cellular phone location data and call detail data?

4 A. Yes.

5 Q. Do you have a curriculum vitae that sets forth your
6 training and experience?

7 A. Yes, I do.

8 Q. Can you look, please, in the binder that is going to be
9 handed to you in a moment at Exhibit 37.

10 A. Yes.

11 Q. Is that your CV?

12 A. Yes, it is.

13 MR. BEN'ARY: I'd offer 37 into evidence.

14 THE COURT: Without objection.

15 MR. JENKINS: No objection, Your Honor.

16 THE COURT: No objection.

17 (Government's Exhibit No. 37 was admitted into evidence.)

18 MR. BEN'ARY: And I would offer the witness as an
19 expert in cellular telephone location data analysis.

20 MR. JENKINS: No objection, Your Honor.

21 THE COURT: So recognized.

22 BY MR. BEN'ARY:

23 Q. I'm going to ask you some questions that will be useful
24 to the jury in understanding the analysis that you performed
25 in this case.

1 A. Okay.

2 Q. Can you give a brief description for the members of the
3 jury, please, of how cell phones work on a network?

4 A. Sure. So essentially your phone is always in constant
5 contact with the network or, essentially, the towers that
6 service your phone. The network always needs to know where
7 your phone is located to connect an incoming call. Your phone
8 is always in this contact with the towers determining from
9 which tower it's receiving the strongest signal and then
10 that's the tower that's going to be utilized to make or
11 receive that phone call.

12 Generally speaking, it's a tower that's physically
13 closest to you or at least in close proximity, enough to be
14 receiving that strongest signal.

15 Q. Do cellular service providers keep data that relates to
16 what cell towers their devices are connecting to?

17 A. Yes, they do.

18 Q. Can you describe the type of data available for the
19 members of the jury, please.

20 A. Sure. When we order these historical call detail
21 records, we essentially receive either a spreadsheet or a PDF
22 file from the major carriers such as AT&T, Sprint, T-Mobile,
23 Verizon. Generally speaking, they contain all the same
24 information; the specifics may vary slightly from company to
25 company, but essentially we'll see a row of data that

1 represents each telephone call or text message that's made or
2 received by the device. And the information that's included
3 in that row of data will include the date and time of the
4 call, the duration of the call, the two numbers that were
5 involved, the number that made the call and received the call,
6 it would make specific information about the device; and then
7 we're provided what the companies call their "cell site" or
8 cell tower information. And with that they provide us with a
9 latitude and a longitude of a cell tower, and that was the
10 cell tower that was utilized to connect that call as it either
11 came in or it was made from the device.

12 Q. When you receive this type of data from the cellular
13 service provider, do you have access to the content of any
14 communications?

15 A. No, I do not.

16 Q. With respect to this tower location information, you said
17 that the providers give you a latitude and longitude of their
18 towers?

19 A. Yes.

20 Q. And in this case, did you actually go out and put eyes on
21 the cell towers involved to verify the correctness of that
22 location?

23 A. Yes, I did.

24 Q. And can you describe for the members of the jury, do
25 different cell providers use different towers?

1 A. They do. They can -- one of them rents space on these
2 towers. So you may have two companies sharing space on the
3 same tower, but they can also -- you could have a location,
4 and, you know, AT&T may rent space on one tower nearby.
5 Sprint has a tower. So they can be co-located on the same
6 tower, but they don't necessarily have to be.

7 Q. And how do those cell towers -- how are they set up, how
8 do they work?

9 A. So in terms of how -- basically, a cell tower provides
10 the ones we see on the side of the road, the large towers.
11 They provide 360-degree coverage around that tower. And then
12 what that coverage is then divided into -- what they call,
13 three separate sectors, generally speaking. Each of those
14 sectors will cover 120 degrees of that circle. So the cell
15 phone company, in addition to providing us the physical
16 location of the tower, they provide us with a piece of
17 information called an azimuth. And what that azimuth tells us
18 is, out of that 360 degree, which sector of those three the
19 cell phone call was made or received on. So we, kind of, get
20 a little bit more of a precise location based on what sector
21 it's on.

22 Q. Now, some cell phones have GPS capabilities, correct?

23 A. Yes.

24 Q. This type of information that you're talking about now,
25 the tower and face information, is that the same or different

1 than a GPS exact location of a device?

2 A. It's different than an exact location from a GPS. This
3 is essentially -- only gives us -- we know where the tower is
4 located and we know what direction from the tower where that
5 device was when the call was made or received.

6 Q. And in this case, did you review that type of information
7 for a number of devices?

8 A. The cell tower information, yes.

9 Q. There also are records now admitted into evidence
10 regarding NELOS. Are you familiar with that?

11 A. Yes. AT&T provides us with NELOS information.

12 Q. And what is that? Can you explain to the members of the
13 jury?

14 A. So NELOS information is a little bit more of a precision
15 location than we get with the cell towers. Like I said, with
16 the cell towers we're given the location of the tower, and the
17 general direction from the tower for that phone would be
18 located to make or receive the phone call.

19 With NELOS data, what the phone companies are doing
20 when they provide us this more precision location is through
21 various algorithms within their network. They're trying to
22 determine the -- a closer actual location of the device, not
23 just the direction of the tower from which the call was made
24 or received, but an estimated location of where the device
25 actually was at a given time.

1 Q. And in this case did you receive information from
2 Sprint/T-Mobile related to a phone number that was described
3 to you as Laila Sheehy's phone?

4 A. Yes.

5 Q. And did you receive information from AT&T on a number
6 that was described to you as the defendant's phone?

7 A. Yes.

8 Q. And did you prepare a series of maps that allow a visual
9 depiction of these devices from October 25, 2019, up through
10 early morning of October 26, 2019?

11 A. Yes.

12 Q. Can you take a look at -- let me have you just look
13 generally at 38, 39, 40, 41, and 42.

14 A. Yes. Those are the maps that I created.

15 Q. And do they accurately depict information that you
16 received from the business records of AT&T and Sprint
17 T-Mobile?

18 A. Yes.

19 MR. BEN'ARY: Offer 38, 39, 40, 41, and 42 into
20 evidence.

21 THE COURT: Without objection.

22 MR. JENKINS: No objection.

23 (Government's Exhibit Nos. 38, 39, 40, 41, and 42 was received
24 into evidence.)

25 MR. BEN'ARY: Let's start, please, with 41. And is

1 there any way to maybe cut off the border so you can zoom down
2 a little bit on the actual map.

3 BY MR. BEN'ARY:

4 Q. All right. What we're looking at here is Exhibit 41.

5 Is this focused on a particular area in the
6 8:00 p.m. to 2:00 a.m.? That's, again, October 25th into 26th
7 of 2019 area?

8 A. Yes. It's focused in on the area of Arlington Drive in
9 Alexandria.

10 Q. Are you familiar with Mount Vernon Square Apartments?

11 A. Yes.

12 Q. And is that in that area that's depicted here?

13 A. Yes.

14 Q. And let's have you describe, sort of, the different types
15 of information that are depicted on here.

16 A. Okay. On the map you'll see there's a couple of orange
17 text boxes, and what those represent are just locations of
18 interest that were part of the investigation. And then we see
19 several types of phone data indicated here and with various
20 colors of the text boxes, and I'll go a little bit over of
21 what each one means.

22 We have three pieces of data for what was Melvin's
23 phone from AT&T. The dark blue represents a voice call that
24 was in Melvin's records and provided with a cell tower
25 location. The purple represents a SMS message that was in

1 Melvin's records in which we were provided a location and
2 those are indicated in purple with the purple text boxes,
3 which indicate the time of the text message or the call, and
4 then we see these white or blue circles that represents the
5 NELOS data. And like said, that's AT&T providing us what
6 they -- send us as an estimate of what the location of the
7 phone was. And if you look at the map, there's several of
8 those dots, and they have these wider circles surrounding
9 them. What those circles indicate is AT&T's, sort of, their
10 accuracy radius. So they would accept any -- that phone was
11 in any location within that circle to be an accurate reading.
12 That's our estimation as to how accurate their latitude and
13 longitude of the location of that device is. And this map, we
14 don't see any of the phone calls on Laila's phone at this
15 time, but on other maps she'll be represented in red.

16 Q. All right. I want to ask you about the dot and the lines
17 coming off of 2122 on the, sort of, middle left side of the
18 map?

19 A. Yes.

20 Q. What is that?

21 A. So when we see the icon like that with the two lines
22 coming across it, what that's indicating -- that dot or circle
23 that's at the center where the lines come together, is the
24 actual location of the cell tower, and then the lines coming
25 off of it are just there to indicate directionality. So what

1 that's showing is that the phone, in this instance, is going
2 to be, sort of, on the east or southeast side of that cell
3 tower for when these phone calls and text messages are made.
4 And so, the times, again, listed on the map indicate either
5 the start time of the phone call or the time of the text
6 message in the records.

7 Q. And sorry, I lost my train of thought.

8 The time is set forth in military time?

9 A. Yes, it is.

10 Q. So 2122 would be 9:22 p.m.?

11 A. Correct.

12 And the records are provided to us in yet another
13 time zone. The records are provided to us and AT&T in what's
14 called "coordinated universal time" which, essentially, is
15 equal to general meantime. So the times have been converted
16 on this map to reflect Eastern daylight time.

17 Q. And so, can you just describe what it is that your
18 analysis indicates regarding the location of this AT&T phone
19 that was described to you as Melvin's phone in this area
20 between 8:00 and 2:00 a.m. -- 8:00 p.m. and 2:00 a.m.?

21 A. So what I would say, the device is located -- like,
22 again, like I said, on the east side of this tower. And,
23 again, these lines don't indicate that that's as far out or
24 that the cell tower reaches. It's not to give any
25 interpretation as to the strength of that tower and how far

1 the signal reaches. It's just to provide directionality that
2 the phone was on the east side of that tower. And then we see
3 the newest data around the same time, around the 2100 to
4 22-hour time frame, is in the same general area on the east
5 side of that tower.

6 Q. Let's look, please, at Exhibit 38.

7 And 38 is a wider view of the sort of Route 1
8 Alexandria corridor of Fairfax County?

9 A. Yes.

10 Q. And this covers 8:00 p.m. to 11:00 p.m. on October 25,
11 2019?

12 A. Correct.

13 Q. All right. And let's focus first on information about
14 the phone that was described to you as Laila's phone, the
15 Sprint phone.

16 What is -- what can you say about that phone's
17 location during those hours?

18 A. Okay. And the records that we received from Sprint
19 regarding Laila's phone, we only received location information
20 when there was a voice phone call. Sprint does not provide us
21 location information for text messages. So any of these tower
22 indicators we see for Laila's phone indicate a voice call.
23 And what we see here, there's a tower here close to Potomac
24 Mills Mall down in Prince William County and her phone appears
25 to be down in that area from about 8:15 to 8:50 p.m.

1 Q. All right. And then can you describe what you can glean
2 from this map with respect to the AT&T phone that you -- that
3 was described to you as Melvin's phone?

4 A. So the first record received from Melvin's phone in this
5 time frame is at 8:15 p.m. It's marked there as 2015. Again,
6 we have these same orange text boxes that indicate a location
7 of interest in the investigation. This 8:15 call appears to
8 be in the general area of Melvin's home address on Burgundy
9 Road. We then see the phone in the 9:00 p.m. hour, and this
10 was just a zoomed out version around 9:20 p.m. that we just
11 looked at where we had the zoomed in version of this map in
12 which the phone appears to be over in that area on Arlington
13 Drive. From after the 9:00 p.m. hour, the phone is seen
14 again, if we look up a little bit further north around
15 10:02 p.m., and so it says 2202 and 2210 hours. That tower is
16 located in the area of Route 1 near Washington, Reagan
17 National Airport. We see the phone then through NELOS data
18 sort of continuing to move around different areas in Arlington
19 in the 10 o'clock hour.

20 Q. Let's look at Exhibit 40. And this is a sort of
21 closer-in view of the Kingstowne area, correct?

22 A. Correct.

23 Q. And let's start again with Laila's phone, what
24 information is depicted here?

25 A. So we see initially for Laila's phone, we have some voice

1 calls at 2320 and 2323 hours in the area of Kingstowne. We
2 see here that AT&T and Sprint appear to have a tower on the
3 same location as we have Melvin also has a voice call at 2322
4 on a tower at the same location. And then we don't see
5 Laila's phone back in this area again until after midnight
6 around 12:30 to 12:40 a.m.

7 Q. All right. And what about the AT&T phone, Melvin's
8 phone?

9 A. So, again, the AT&T phone, like I just mentioned, we do
10 have one voice call at 2322 on a similar tower. The tower in
11 the same location as Laila's phone. And then we, again, see
12 this NELOS data, which, again, is sort of the more precision
13 data that AT&T is providing us for a location of the device.
14 And that is around the same time frame of 2322 hours. And we
15 see that phone, the NELOS data, back in this general area.
16 Again, after midnight. The time marked here is 12:47 a.m.

17 Q. Let's turn, please, to Exhibit 39.

18 A. Okay.

19 Q. This is the zoomed-out view of the area, correct?

20 A. Correct. So we can see those calls around Kingstowne on
21 this map. It's just zoomed out for further distance.

22 Q. And this covers the time frame between 11:00 p.m. and
23 2:00 a.m.?

24 A. Correct.

25 Q. All right. Again, let's start Laila's phone. What

1 information is depicted here?

2 A. Again, we start with those same calls that are in the
3 Kingstowne area around 2320 hours. The next time we have
4 location information for Laila's phone is closer to midnight
5 in which the phone is up further north up Route 1 in
6 Alexandria. And then we see the phone -- again, these calls
7 are 0026 and 0040 were depicted on that Kingstowne map. That
8 is when the phone is back in that general Kingstowne area.

9 Q. And what about for Melvin's phone?

10 A. So for Melvin's phone, we see there is some NELOS hits.
11 It looks like just north of the beltway. And then we see that
12 phone move to the Kingstowne area, which, again, was depicted
13 on the previous map when we saw Melvin and Laila's phone there
14 together at the same time. Melvin's phone then moves also
15 around the Route 1 corridor. We have towers moving up north
16 through Route 1 and then we have this NELOS data, again,
17 further north up Route 1 about 12:01 a.m., and then again
18 after that we'll see the NELOS data back in the Kingstowne
19 area which was depicted on the zoomed in map, and then we see
20 additional NELOS data for Melvin's phone up in the Arlington
21 area. If you look up to the -- just near the top of the map,
22 we see that NELOS data around 1:00 in the morning to just
23 about 2 o'clock in the morning, 1:58. And then in addition to
24 the NELOS we also have a voice call at 2:01 a.m. in which the
25 phone is located up in the same general Arlington area.

1 Q. Okay. And then lastly, Exhibit 42. And this focuses on
2 the area around the defendant's home -- listed home address,
3 correct?

4 A. Correct. I was asked to just determine how many times we
5 see through the night that Melvin's phone is in the area of
6 his residence on Burgundy Road. So you see -- we did have
7 that one call at 8:15 p.m. and then the next time we see the
8 phone in that area we have a NELOS hit at 2:14 and then a
9 voice call at 2:15 in the morning.

10 Q. This phone was being -- there's no indication that this
11 phone was being used in this area between those time frames;
12 is that correct?

13 A. I don't see any location data putting it there.

14 Q. And if there were calls or messages being made or if AT&T
15 had stored NELOS data, you would expect --

16 A. I would expect to see that, yes.

17 MR. BEN'ARY: Court's indulgence, please.

18 THE COURT: Yes, sir.

19 (Counsel confers.)

20 MR. BEN'ARY: Those are the questions I have. Thank
21 you.

22 THE COURT: Thank you, sir.

23 Mr. Jenkins.

24 MR. JENKINS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. JENKINS:

2 Q. Good afternoon, Ms. White.

3 A. Good afternoon.

4 Q. Ms. White, when you began your -- responding to the
5 prosecutor's questions on direct examination, I believe you
6 started off by saying that the cell towers -- well, your cell
7 phone are always in communications with cell towers?

8 A. Well, if your phone is on and not on airplane mode. If
9 you're connecting to the network, it's -- your phone is always
10 identifying from where it's getting the strongest signal.

11 Q. So just to be clear, it's not accurate to say that your
12 phone is always in communication with the towers, that's only
13 if it's on, correct?

14 A. That's correct, yes. I apologize if I said that.

15 Q. And that's also if the phone is working properly,
16 correct?

17 A. Correct.

18 Q. That's also only if the tower is working correctly,
19 correct?

20 A. Correct.

21 Q. And that's also only if the network is working correctly,
22 correct?

23 A. Correct.

24 Q. And you're not here to vouch for any of those things,
25 correct?

1 A. Correct.

2 Q. You only know about the data that was given to you by
3 these cell providers, correct?

4 A. Correct.

5 Q. You have no way of verifying their accuracy, correct?

6 A. Correct.

7 Q. You don't know --

8 A. Other than just to view the cell tower that there is one
9 at that location, but other than that, I have no independent
10 verification.

11 Q. I'm talking about the particular data that suggest a
12 phone call was made at a particular time?

13 A. No, I don't. I don't have a way to verify that.

14 Q. Same way through with SMS messaging, correct?

15 A. Correct.

16 Q. Now, tell me what happens when someone uses their cell
17 phone but instead of using the built in SMS messaging system,
18 they use some social app or something like that in order to
19 send a message.

20 Would that be captured in the records?

21 A. Well, for AT&T that does get captured, those are sent as
22 a data record. So it's not sent as a voice or a SMS, even if
23 you use iMessage on an iPhone, it's not considered a routine
24 SMS message. They come across as a data record. So AT&T
25 provides us with that information, but we have no way of

1 knowing -- you may see a data transaction occur, but we have
2 no way of knowing whether that was you connecting to an app,
3 whether there was an iMessage. So we see data information but
4 we don't know specifically what it is.

5 Q. So in the records that you received --

6 A. Yes.

7 Q. -- just with respect, first, to the phone that you
8 understood was associated with my client, Mr. Melvin Palma
9 Flores --

10 A. Yes.

11 Q. -- is it your testimony that those records did not
12 include those types of communications you just described for
13 the jury where data --

14 A. There is --

15 Q. -- exchange occurred?

16 A. There is data records in those records. I don't use
17 those in my analysis in that the data records, the way they
18 transact across the towers, aren't as precise as the voice and
19 SMS messages. So then I become less able to verify any of
20 that or I don't use the data records when I do the analysis.

21 Q. So is it fair to say what's depicted in Government's
22 Exhibit 38, 39, 40, and 41, they don't include any of those
23 data records, correct?

24 A. Correct. When I -- when I plotted the information on the
25 map, I put it on for my own reference as I am going through

1 the records. But because I don't, I understand through
2 training and experience that those data records aren't always
3 as, let's say, accurate with time stamps and things like that
4 as the voice and SMS, but I don't include them when I do my
5 full analysis.

6 Q. And you were instructed by someone, I'm assuming law
7 enforcement, to use cell records for a phone that you
8 understood to be associated with Melvin Flores, correct?

9 A. Correct.

10 Q. And a Laila Sheehy, correct?

11 A. Correct.

12 Q. Did anyone ask you to do a similar analysis for a cell
13 phone in the name of Kollin Worlds?

14 A. I was not asked.

15 Q. So only those two individuals, correct?

16 A. Correct.

17 Q. Now, if someone -- and also the data that you relied on
18 to determine when a voice call was made, you can't tell who
19 actually was using the phone at the time, correct?

20 A. That's correct. I'm sorry, that's correct. It only
21 is -- the device is -- is what's making or receiving these
22 phone calls. I don't know who actually has it in their hand.

23 Q. So, for example, if I gave you my cell phone to make a
24 phone call and you engaged the phone and you used the phone,
25 you can't distinguish between whether it was me using the

1 phone or you using the phone, correct?

2 A. That's correct.

3 Q. All you can tell is that that phone was being used?

4 A. Correct.

5 Q. Now, in terms of the location, on your maps it shows the
6 direction in which the phone was coming in contact with the
7 tower, correct?

8 A. Correct.

9 Q. But different towers, do I understand correct, have
10 different coverage areas, correct?

11 A. Yes, they do.

12 Q. Some are broader than others, correct?

13 A. That's correct.

14 Q. And, in fact, what we find is that in urban areas we
15 normally see a higher concentration of towers, correct?

16 A. Correct.

17 Q. And as a consequence of that they normally have a shorter
18 coverage area, correct?

19 A. Correct. Well, the phone company they're -- they don't
20 want anybody to ever have a dropped call, right. So they will
21 have towers to cover the population in that area with some
22 overlap so that as you travel or move around with your phone
23 you're not going to drop calls. So that's -- you'll have the
24 little bit of overlap, so your tower will go out almost as far
25 as until it kind of intersects with the signal strength of the

1 next closest tower in that direction.

2 Q. But what you're saying is that's the goal --

3 A. That's the goal.

4 Q. -- to not have dropped calls, correct?

5 A. Correct, yes.

6 Q. But we all have experience -- I'm sure you've experienced
7 dropped calls, correct?

8 A. Yes.

9 Q. But in more rural areas we tend to find that the service
10 area of the towers tend to be larger, correct?

11 A. That's my understanding, yes.

12 Q. And when the service area is larger, does that make it
13 more difficult or less difficult for you to actually place the
14 phone?

15 A. Well, in none of the tower records am I actually placing
16 the phone in a specific spot. I can only say the phone is
17 likely to be this direction from this physical location of a
18 cell tower. I don't have any way to determine within that
19 area of coverage where the phone may be at any given time.

20 Q. And just to give the jury -- orient the jury, when we
21 talk about areas of coverage, give us an approximation, a cell
22 tower, does it cover one block, ten city blocks, one mile, ten
23 miles?

24 A. So in my experience in most of the work that I do covers
25 Fairfax County. And generally speaking, about every one to

1 two miles as the crow flies, you're going to encounter another
2 cell tower. So the telephone companies don't provide us with
3 an exact distance or coverage area, but given that we see that
4 coverage goes out until you overlap with another neighboring
5 tower, I would say you're roughly within, you know,
6 one-and-a-half, two miles in most of Fairfax County,
7 especially the Alexandria area, before you'll run into another
8 tower.

9 Q. So, for example, if you were using your phone in this
10 very courthouse, and you had the data that suggested that the
11 phone was in a certain direction of a nearby tower, you could
12 either be sitting in this courtroom or you could be two miles
13 east on Duke Street?

14 A. Yes. If a tower reached out that far, yes, you could.

15 Q. Or you could be two miles west on Duke Street?

16 A. Well, it depends which way the coverage was facing, but
17 if you were on the west side of the tower then, yeah, you
18 could be anywhere in the distance that tower reaches on that
19 west side of that tower.

20 Q. Or you could be a block over?

21 A. Correct.

22 Q. It's no way of telling, correct?

23 A. Correct.

24 MR. JENKINS: I have no further questions, Your
25 Honor.

1 THE COURT: Redirect.

2 MR. BEN'ARY: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BEN'ARY:

5 Q. Do you -- Mr. Jenkins asked you a question about whether
6 you plotted cell data for a phone belonging to Kollin Worlds?

7 A. Yes.

8 Q. Do you know whether Mr. Worlds even had a phone or not?

9 A. My understanding was that he did not have a phone.

10 Q. With respect to whether the towers or networks are
11 working -- Mr. Jenkins asked again -- if the towers or
12 networks aren't working, you won't see this type of location
13 data?

14 A. Correct.

15 Q. Is there any indication from the records that you looked
16 at for October 25th and 26th of 2019 that there was a problem
17 with the tower or the network?

18 A. Not that I saw.

19 Q. And with respect to phones, Mr. Jenkins clarify that a
20 phone that's off or I think you said airplane mode or not
21 working wouldn't connect to the network, correct?

22 A. Yes, and that was my mistake by saying "always." But
23 basically if your phone is on and connecting to the cellular
24 network, the network knows where it is.

25 Q. So for the company, the cell service provider, AT&T and

1 Sprint, to have records of these calls or the NELOS data, the
2 phone would have to be on and working and connecting to the
3 network, correct?

4 A. Correct.

5 Q. And these phones were on and connected to the network
6 during the time periods that we looked at, correct?

7 A. Correct. We were provided records showing that.

8 MR. BEN'ARY: Thank you, Your Honor. That's all I
9 have.

10 THE COURT: Is this witness subject to recall?

11 MR. BEN'ARY: Not by the government.

12 THE COURT: Mr. Jenkins.

13 MR. JENKINS: No, Your Honor.

14 THE COURT: Thank you, ma'am. You may step down.

15 Please do not discuss the case or any aspect of the case with
16 anyone while the case is pending.

17 THE WITNESS: Okay. Thank you.

18 (Witness excused.)

19 THE COURT: Would you like to read your stipulations
20 in at this time?

21 MR. BEN'ARY: I think that's a good idea, Your
22 Honor, if it pleases the Court.

23 THE COURT: Yes, sir.

24 Ladies and gentlemen of the jury, you heard me
25 earlier talk about stipulations. Stipulations are agreements

1 of the parties that if a witness had taken the stand, he or
2 she would have testified to the thing in question. You're to
3 give it whatever weight you deem appropriate.

4 MR. BEN'ARY: Your Honor, may it please the Court.

5 We would offer in Government's Exhibit 52. It's
6 entitled, "Stipulation Concerning Letter Evidence." May I
7 read it in the record?

8 THE COURT: Yes, sir.

9 MR. BEN'ARY: The United States of America by and
10 through undersigned counsel and the defendant, Melvin Palma
11 Flores -- sorry, going too fast.

12 Melvin Palma Flores, through his counsel, for
13 purposes of trial, stipulate to the authenticity, foundation,
14 proper chain of custody and hearsay exceptions, Federal Rules
15 of Evidence 803 and 807. For the exhibits, testimony, and
16 facts as set forth below, Government's Exhibit 34 is a letter
17 authored by the defendant and sent to Laila Sheehy in and
18 around October 2020. Government's Exhibit 35 is a letter
19 authored by the defendant and sent to Laila Sheehy in or
20 around December 2020, and it's signed by the parties.

21 THE COURT: Yes, sir.

22 You confirm, Mr. Jenkins?

23 MR. JENKINS: That is correct, Your Honor.

24 THE COURT: Thank you.

25 MR. BEN'ARY: Your Honor, we'd offer Government's

1 Exhibit 53. It's entitled, "Stipulation Concerning Ballistic
2 Evidence." It has a very similar first paragraph that I would
3 propose not reading again.

4 THE COURT: Yes, sir.

5 MR. BEN'ARY: And skip to the facts of it which
6 state that: On October 26, 2019, Detective Michael Roberts of
7 the Fairfax County Police Department collected the following
8 exhibits from the area around 7112 Fairchild Drive in
9 Alexandria, Virginia and logged them into Fairfax County
10 Police Department evidence. And it lists Government's Exhibit
11 20. And what it is 21, 22, 23, 24. It's cartridge casings
12 and bullet fragments and a bullet.

13 On October 26, 2019, Dr. Jocelyn Posthumus of the
14 Virginia Office of the Chief Medical Examiner performed an
15 autopsy on the body of Xyqwavius Brown. During the autopsy,
16 Dr. Posthumus recovered a bullet and two lead fragments,
17 Government's Exhibit 25, from inside Brown's skull. Fairfax
18 County Police Department, Detective Olan Faulk, took
19 possession of Government's Exhibit 25 from Dr. Posthumus and
20 logged it into Fairfax County Police Department evidence.

21 On October 29, 2019, Detective Roberts submitted
22 Government's Exhibit 20 to 25 to the Virginia Department of
23 Forensic Science Firearms and Toolmarks Section for forensic
24 analysis. Forensic scientist supervisor, Cara with a C,
25 McCarthy, performed comprehensive forensic analysis on

1 Government Exhibits 20 to 25 using recognized and reliable
2 methods.

3 Ms. McCarthy's conclusions are reflected in her
4 certificates of -- certificate of analysis marked as
5 Government's Exhibit 16.

6 THE COURT: Confirmed, Mr. Jenkins?

7 MR. JENKINS: Yes, Your Honor.

8 THE COURT: Thank you.

9 MR. BEN'ARY: And then finally, a stipulation
10 concerning cell phone evidence marked as Government's
11 Exhibit 54.

12 On October 26, 2019, the cell phone belonging to XB
13 was recovered by Fairfax County Police Department detectives
14 from the area around 7112 Fairchild Drive in Alexandria,
15 Virginia. XB's cell phone was provided to FCPD Detective Ryan
16 Bayliss to conduct an extraction from the data from the cell
17 phone pursuant to a search warrant. The data obtained by
18 Detective Bayliss from XB's cell phone includes Government's
19 Exhibit 51.

20 On December 30, 2019, FCPD Detective Melissa
21 Wallace, seized an Apple iPhone 11 device named Mel's iPhone,
22 Government's Exhibit 26, from the person of the defendant.
23 Government's Exhibit 26 was logged and maintained in FCPD
24 evidence.

25 On February 12, 2020, pursuant to a search warrant,

1 Detective Bayliss extracted the data from Government's
2 Exhibit 26. The data obtained by Detective Bayliss includes
3 Government's Exhibit 27 and 29A through 33, and it's signed by
4 the parties.

5 THE COURT: Confirmed, Mr. Jenkins?

6 MR. JENKINS: Yes, Your Honor.

7 THE COURT: Very good. Thank you, Counsel. Is that
8 your last witness for the day?

9 MR. BEN'ARY: Your Honor, it is.

10 We went a little bit faster than we expected and
11 hope to conclude tomorrow morning.

12 THE COURT: Very good.

13 Ladies and gentlemen of the jury, this is the point
14 in time, and I sort of made a promise to you that I would try
15 to have you out of here by 4 o'clock today and I met my
16 commitment. I'm really excited about that. So what we're
17 going to do is allow you to retire for the end of the day.
18 And what I always say when I let a jury go for the first time
19 is I give my own experience. When you get home, your spouse
20 or your loved one is going to say, "What did you do today?"
21 And your response is going to be: "I was on jury duty." And
22 then if your spouse or loved one is like mine, they will say:
23 "Well, what was going on?"

24 That's where you start getting yourself into
25 trouble. So you can say that the judge said that you were

1 going to ask me that question and I am not allowed to answer.

2 At some point I'll be able to talk to you about it, but I just
3 want to let you know that the judge warned me about this and I
4 don't want to get into trouble.

5 And he actually told a little bit of a story about a
6 juror who did not follow through that instruction and ended up
7 having to pay \$23,000 into the court treasury. You don't want
8 to do that during the Christmas and holiday season, so please
9 adhere to the instruction that the Court give you.

10 Ladies and gentlemen, you've been very attentive
11 today and I'm sure that Mr. Flores, Mr. Jenkins, and counsel
12 for the government really appreciate that. If you didn't have
13 good citizens like you who are willing to meet your public and
14 private responsibility as citizens of the United States our
15 system would fail. So I would like to let you know how much I
16 appreciate your attentiveness today.

17 Tomorrow we'll start at 10 o'clock. We'll have a
18 lunch for you. We'll probably like to have you on-site at a
19 quarter of 10:00. As you go for the day, Ms. Tinsley, who is
20 the best courtroom security officer in this courthouse --
21 she's going to roll her eyes, but I always say that because
22 she is -- she's going to want to take your telephone number.
23 And that is because if there's a situation or a circumstance
24 that arises, she's going to contact you and make sure that,
25 number one, that you're okay. And number two to make sure

1 that you're going to be able to get here. So it is important
2 because we cannot start until everybody is here.

3 I hear that it has warmed up a little bit outside.
4 It's still light outside. I hope that you can get home safe
5 and we'll see you tomorrow morning no later than 10:00 a.m.
6 Thank you, ladies and gentlemen.

7 (Jury dismissed.)

8 THE COURT: All right. Ladies and gentlemen, you
9 can be seated.

10 Mr. Flores, are you entirely satisfied with the
11 services of your counsel?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Very good. Mr. Flores, we'll start
14 tomorrow at 10 o'clock. I'm sure that Mr. Jenkins will spend
15 some time with you in preparation for tomorrow. Things are
16 going to be moving pretty quickly tomorrow. We're going to be
17 probably, based upon what counsel has indicated, providing
18 jury instructions and closing arguments in your case. So if
19 there's anything that you want to share with Mr. Jenkins, make
20 sure that you do that between now and tomorrow morning, sir.

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: Do you have any questions?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Very good. Anything from the
25 government?

1 MR. BEN'ARY: No, Your Honor.

2 THE COURT: Mr. Jenkins.

3 MR. JENKINS: No, Your Honor.

4 THE COURT: Very good. You all be safe. Have a
5 good trip home.

6

7 **(Proceedings adjourned at 3:46 p.m.)**

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CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Jury Trial in the case of the **UNITED STATES OF AMERICA versus MELVIN PALMA FLORES**, Criminal Action No.: 1:20-cr-142, in said court on the 13th day of December, 2021.

I further certify that the foregoing 164 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this June 7, 2023.



Tonia M. Harris, RPR
Official Court Reporter